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September 14, 2017

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Presentation in CC Docket No. 80-286
Petition of Terral Telephone Company, Inc. For Waiver of 47 C.F.R. Sections 36.3,
36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36
Category Relationships**

Dear Ms. Dortch:

On September 12, 2017, Terral Telephone Company, Inc. (Terral) met by conference call with Rhonda Lien, John Hunter, Edward Krachmer, William Kehoe and Joseph Sorresso of the Wireline Competition Bureau in connection with Terral's pending waiver request in the above-referenced docket. Dick Segress and Chad Segress of Terral, Charles Curtis of Aegis Consulting Group and the undersigned participated in the conference call for Terral.

During the call, we discussed the waiver petition Terral filed on August 29, 2012 and the updated information filed on August 16, 2017 concerning the revenue impact to Terral if the waiver is granted. We explained that Terral obtained an RUS loan to make substantial investments and deploy fiber facilities, all of the RUS investment has been made, and the network is up and running. A disproportionate share of this investment is placed on the intrastate jurisdiction based on the frozen categories.

Terral has received on an interim basis a large amount of state universal service support since April 2013. This support from the Oklahoma Universal Service Fund was provided on an interim basis subject to refund, based on a showing that Terral's federal universal service support was reduced because of the FCC's actions to reform universal service support. See, 17 O.S. Section 139.106(K). Under Oklahoma law, Oklahoma Commission Staff reviewed the request

and filed a Notification of Recommendation advising Terral that Staff supported its request (Attachment 1). However, Sprint and Verizon filed requests for reconsideration asking the Oklahoma Corporation Commission (OCC) to reject the Staff determination on various legal theories which triggered a provision under the statute allowing payment of amounts requested on an interim basis subject to refund upon issuance of a final order by the OCC.

A hearing was held on Sprint and Verizon's requests for reconsideration in October 2013 and the ALJ who heard the case issued a recommendation in April 2014 (Attachment 2). The OCC has not issued a final order in the case. The OCC issued an order in July 2017 (Attachment 3) reopening the record in the case to take additional evidence to address concerns raised by the OCC in recent orders denying similar requests for Oklahoma Universal Service Fund support for lost federal USF revenues (see, Attachment 4). In addition, Commissioner Anthony requested specific information be put into the record (see, Attachment 5). A hearing on the supplemental evidence is scheduled for September 27, 2017.

Grant of the waiver would allow the proper jurisdictional allocations of investment and expense and, as a result, it would reduce Terral's reliance on federal and state universal service support, neither of which are reliable sources of revenue. Grant of the waiver also will allow Terral to aggressively market its Ethernet services because the costs associated with additional Ethernet customers will be properly allocated to the interstate jurisdiction. Grant of the waiver, therefore, will provide stability and reliability of revenue for Terral, which will allow Terral to manage its business on a going forward basis.

During the call, Terral also discussed the revenue impact to Terral if the waiver is granted. Terral will provide additional information on the revenue impact in a subsequent ex parte letter.

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Mary J. Sisak

cc: Rhonda Lien
John Hunter
Edward Krachmer
William Kehoe
Joseph Sorresso

ATTACHMENT 1

FILED
FEB 25 2013

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

IN THE MATTER OF THE APPLICATION)
OF TERRAL TELEPHONE COMPANY) CAUSE NO. PUD 201200183
FOR FUNDING FROM THE OKLAHOMA)
UNIVERSAL SERVICE FUND)

**NOTIFICATION OF RECOMMENDATION BY ADMINISTRATOR FOR
REIMBURSEMENT FROM THE OKLAHOMA UNIVERSAL SERVICE FUND**

REQUEST

On **August 6, 2012**, Terral Telephone Company (Terral) requested a **lump sum** support payment of **\$32,028** covering the period from **July 1, 2012 to July 31, 2012**, and continued recurring monthly support beginning August 1, 2012, in the amount of **\$32,028** from the Oklahoma Universal Service Fund (OUSF), for Primary Universal Service for the recovery of lost Federal Universal Service Fund (FUSF) Revenue attributable to the Inter-Carrier Compensation/Universal Service Fund Transformation Order (FCC 11-161).

On **November 5, 2012**, Terral filed an amended application to accurately reflect the primary OUSF being requested. The original filing reflected estimated federal USF losses for 2012 and 2013, provided by NECA, in spreadsheets marked as confidential, dated May 2012. By the date of the original filing, portions of the FCC's order were implemented and other portions were still being modified. The amended filing reflects final lost federal USF revenue from FCC and USAC sources. Those sources were provided to PUD for verification and are publically available. The revised Attachment "A" reflects these revisions. Except as amended, the Applicant reaffirmed each and every allegation contained in the Application filed on August 6, 2012. The Amended Application requested a **lump sum** support payment of **\$70,022.52** covering the period from **July 1, 2012 through October 31, 2012** and continued recurring monthly support beginning November 1, 2012, in the amount of **\$26,258.44**.

PUD ANALYSIS

On **November 18, 2011**, the FCC released and published its Inter-Carrier Compensation and Universal Service Transformation Order (FCC 11-161, "Order"), which provided a staged transformation of both inter-carrier compensation charges to a bill-and-keep environment, as well as modifications to Universal Service High Cost funding to price cap, mobile, CLEC and rate of return carriers. With regards to the Order's impact on Terral, the new FCC Order reduces Terral's interstate switched revenue requirement by 5% per year, net changes in inter-carrier compensation revenue associated with lower rates, as well as reductions to both USF High Cost Loop (HCL) and Interstate Common Line Support (ICLS). USF HCL was 'double-capped' for Terral, in that capital and operating costs were reduced in the calculation of un-separated cost per working loop. Then, HCL was capped again

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when added to ICLS and compared to the FCC mandated cap of no more than \$250 per line per month. In addition, the Order required the same capital and expense reduction limits be placed on ICLS. However, the Order fell short of implementing the limits to ICLS and asked for comment as to how such limits would be implemented.

The reduction in revenues became effective July 1, 2012 with additional reductions beginning January 1, 2013 with additional reductions thereafter. The revenues lost by Terral for the period beginning July 1, 2012 through June 30, 2013 are projected to be \$315,101.28. The \$315,101.28 represents the lost revenues for twelve months from July 1, 2012 through June 30, 2013. However, the Company is requesting, the actual reduction in revenues through October 31, 2012 of \$70,022.52 as set forth on Attachment "A", and a monthly recurring amount of \$26,258.44.

On **July 1, 2012**, the limits and caps associated with the Order were implemented for Terral, and Terral began to receive less FUSF as a result of the new limits and caps from the Order.

On **August 6, 2012**, Terral Telephone Company filed an Application seeking reimbursement for Primary Universal Services from the Oklahoma Universal Service Fund. Based on the Order, the capital and operating cost limits are phased in 25% in 2012, 50% in 2013 and 100% by January 2014. In addition, the \$250/line per month cap for total USF received is also phased in 1/3rd in 2012, 2/3rd for calendar year 2013 and fully phased in beginning January 2014. Terral's application calculated its ongoing losses based on the actual losses for 2012 and estimated losses for January through June 2013 based on the FCC Order using the latest filed data. Terral had calculated the initial lump sum of losses representing July 2012 as well as monthly recurring, beginning August 1, 2012, as the total losses from the FCC Order, between July 2012 and June 2013, divided by 12 months. The initial application was filed when the CAF Order was implemented but actual numbers were not yet publically available. Terral had previously supplied estimates based on confidential schedules provided by NECA. As a result, Terral filed an amended application on **November 5, 2012** reflecting actual lump sum losses from July 2012 through October 2012 and revised monthly recurring losses, beginning November 2012, based on revised 12 month losses incorporating the publically available revisions.

The scope of review of this application consisted of PUDs review of all affiliated work papers, supporting calculations, FCC 11-161, DA 12-646, FCC 12-52, 47 CFR Part 54.302(a-c), Oklahoma Statute, Title 17 § 139.106(G) and (K), and OAC 165:59-3 that were either submitted with the application or submitted in viewing confidential documentation. In addition, Terral has provided a link to the FCC web site that contains pertinent information regarding Terral's HCL information, as well as Terral's specific capped results in calculating HCL. Lastly, USAC has created a new search engine for its high cost disbursement that reflects actual losses incurred from the USF cost per line cap for both HCL and ICLS.

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On **September 20, 2012**, PUD met with the attorney and cost consultant for Terral to review the supporting documentation. The supporting documentation contained public information regarding high cost loop as well as confidential information supplied from the National Exchange Carrier Association (NECA). The NECA information was a spreadsheet that detailed the estimated impact the CAF Order would have on Terral for the remainder of 2012, 2013 and 2014. Terral's cost consultant reviewed the information with PUD and tied the numbers reflected on the NECA spreadsheet back to the initial OUSF application. For each year, the spreadsheet detailed the impact on Terral for the following USF mechanisms: 1) High Cost Loop – Regression Analysis Limits, 2) Interstate Common Line Support (ICLS) - Regression Analysis Limits, 3) USF cap per line (High Cost Loop and Interstate Common Line Support) at the \$250 per line per month cap.

PUD met with Terral's attorney on September 6, 2012; PUD met with the cost consultant on two additional occasions October 19, 2012, and February 11, 2013 and discussed the final proposed recommendation by phone on February 22, 2013.

PUD relied on the following from Oklahoma Statutes, Title 17, Section 139.106 in considering whether Terral should be reimbursed for the losses in federal high cost support.

G. Any eligible local exchange telecommunications service provider may request funding from the OUSF as necessary to maintain rates for primary universal services that are reasonable and affordable. OUSF funding **shall** be provided to eligible local exchange telecommunications service providers for the following:

1. To reimburse eligible local exchange telecommunications service providers for the reasonable investments and expenses not recovered from the federal universal service fund or any other state or federal government fund incurred in providing universal services.

PUD determined that Terral Telephone Company is an eligible local exchange telecommunications service provider. Terral Telephone Company is the incumbent local exchange carrier for Study Area 432029. Terral Telephone Company serves less than seventy-five thousand access lines.

K. 1. Each request for OUSF funding by an eligible ILEC serving less than seventy-five thousand access lines shall be premised upon the occurrence of one or more of the following:

a. in the event of a Federal Communications Commission order, rule or policy, the effect of which is to decrease the federal universal service fund revenues of an eligible local exchange telecommunications service

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provider, the eligible local exchange telecommunications service provider shall recover the decreases in revenues from the OUSF.

K. 2. The receipt of OUSF funds for any of the changes referred to in this subsection shall not be conditioned upon any rate case or earnings investigation by the Commission. The Commission shall, pursuant to subsection D of this section, approve the request for payment or adjustment of payment from the OUSF based on a comparison of the total annual revenues received from the sources affected by the changes described in paragraph 1 of this subsection by the requesting eligible local exchange telecommunications service provider during the most recent twelve (12) months preceding the request, and the reasonable calculation of total annual revenues or cost increases which will be experienced after the changes are implemented by the requesting eligible local exchange telecommunications service provider.

PUD RECOMMENDATION

After a thorough review, PUD recommends approval in a lump sum reimbursement amount of **\$70,022.52** for the primary universal services representing lost Federal USF covering the period July 1, 2012 through October 31, 2012. PUD recommends approval of monthly payments of \$17,505.63 for the months of November 2012 and December 2012. In addition, PUD recommends approval of recurring monthly reimbursement of **\$26,258.44** starting January 1, 2013, subject to periodic true-ups by Terral. The recommendations are provided relating to the following:

Primary Universal Services

Reimbursement of lump sum requested for July 1, 2012 through October 31, 2012 in the amount of \$70,022.52

Recommended for Approval

Lost FUSF from FCC Order	7/1/2012 to 10/31/2012	\$15,658.52
(Losses attributable to HCL Regression Analysis Limits)		

Recommended for Approval

Lost FUSF from FCC Order	7/1/2012 to 10/31/2012	\$54,364.00
(Losses attributable to \$250 per month, per line cap of the sum of both HCL and ICLS FUSF, as published on NECA and USAC web sites)		

Total Lump Sum Primary Universal Services		<u>\$70,022.52</u>
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Recommended for approval, reimbursement for monthly recurring loss for November 2012 and December 2012, in the amount of \$35,011.26

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Recommendation of Fund Administrator

Recommended for Approval

Lost FUSF from FCC Order January 1, 2013 in the amount of **\$26,258.44**

(Losses attributable to Regression Analysis caps for HCL plus losses attributable to the \$250/line cap, per month in HCL and ICLS FUSF).

Total Monthly Recurring Primary Universal Services

\$26,258.44

The Order did mandate limiting capital and operating expenditures for ICLS, but stopped short of implementing those limits, pending comment cycle and further proposed rulemaking as to how those limits would be calculated for ICLS. To date, there has been no further rulemaking implementing these limits. In the confidential material, dated May 2012, from NECA, the effects of these ICLS limits were estimated for 2012, 2013 and 2014. However, after review of public material on the USAC USF disbursement search engine, no loss of FUSF revenue associated with the capital and operating expenditure limits on ICLS has been realized by Terral, as of the date of this recommendation.

PUD recommends reimbursement for lost USF HCL associated with limits placed on Terral's capital and operating expenditures from the Regression Analysis, for July 2012 and for recurring losses beginning November 1, 2012. FCC 11-161 ordered caps be placed on USF HCL capital and operating expenditures, beginning July 1, 2012. DA 12-646 modified its methods of calculating the limits by modifying the Regression Analysis. The latter Order reflects Terral's resulting limited and unlimited USF HCL, based on 2011 filings, in Appendix B of that same Order. In addition, these same calculations are located on the FCC's web site and were accessed and reviewed for accuracy¹. For the period of July 2012 through December 2012, Terral incurred losses of \$3,914.63 per month. DA 12-646 also phases in the full impact of the Regression Analysis for HCL. Specifically, the Order calculates to see if the losses incurred are 10% or more of total USF HCL. If so, then the losses are capped at 10%. Otherwise, the impact of the Regression Analysis is phased in 25% for 2012, 50% for calendar year 2013 and fully phases in beginning January 2014. In order to calculate the losses Terral incurs between January 2013 and June 2013, PUD divided the 2012 Regression Analysis losses of \$3,914.63 by 25%, then multiplied the result by the 50% to represent lost HCL attributable to the Regression Analysis caps for 2013. The total of 2012 and the first six months of 2013 were totaled and divided by 12. **As a result, PUD recommends reimbursement of \$15,658.52 for FUSF revenue lost from the Regression Analysis caps for July 1, 2012 through October 31, 2012, and \$7,829.26 for FUSF revenue lost from the Regression Analysis caps for November and December 2012.** PUD also recommends recurring monthly payments of **\$5,871.94 for lost USF HCL associated with the Regression Analysis lump sum representing average monthly losses from July 1, 2012 through June 30, 2013, beginning January 1, 2013, subject to subsequent true-ups by Applicant.**

PUD recommends reimbursement for lost USF HCL and USF ICLS associated with the \$250 per line per month cap placed on Terral, for July 1, 2012 through

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Recommendation of Fund Administrator

October 31, 2012 and recurring amounts beginning November 1, 2012. FCC 11-161 implemented a cap of \$250 per line per month for the total amounts of HCL and ICLS received by Terral. According to USAC's new search engine for high cost disbursementsⁱⁱ, the total amount of lost FUSF attributable to this cap for Terral is \$13,591, per month for July through December 2012. This monthly amount represents 33.33% of the actual cap, for 2012 published results. The FCC Order phases in the full impact of the \$250 per line, per month cap in the following way: 1/3rd in 2012, 2/3rd in 2013 and fully phasing in January 2014. By using these phased in percentages based on 2012 losses, PUD calculates the losses for 2013 to be \$27,182 per month. **As a result, PUD recommends reimbursement of \$54,364.00 for the lump sum of July 1, 2012 through October 31, 2012, \$27,182.00 for lump sum losses for November and December 2012 and monthly recurring losses of \$20,386.50, beginning January 2013, representing average losses between July 2012 and June 2013, subject to subsequent true-ups by Applicant.**

According to the applicant's discussions with PUD, there will be true-ups from the federal level to these losses for 2013. In addition, the applicant has informed PUD of applications submitted at the FCC that could also either reduce or eliminate losses incurred and reimbursed from this application. PUD obtained a redacted copy of Terral's FCC waiver of Part 36 categorization factor freeze (DA 12-1692). PUD also reviewed the un-redacted filing with the applicant. According to the applicant, approval by the FCC could either reduce or eliminate losses being reimbursed in this application. Depending on whether such an approval is retroactive or on a pro forma basis, PUD recommends applicant true-up any received OUSF reflecting these reductions in USF losses and reimbursing the OUSF, if necessary, based on support reflecting the lifting of the freeze. Notwithstanding, PUD requests Terral true-up its reimbursements for lost FUSF in this application, on either a monthly or quarterly basis, adjusting the losses for either later data filings or changes in recovery due to its efforts at the federal level.

PUD recommends interim approval for relief in this cause pending further actions from the FCC that may impact Terral's revenue.

Pursuant to OAC 165:59-3-62(g), any adversely affected party shall have fifteen (15) days from **February 25, 2013** to file a request for reconsideration by the Commission of the determination made by the OUSF Administrator. Upon a request for reconsideration, the matter will be set for a hearing before the Commission. If no request for reconsideration is made, the Commission may issue an order approving the disbursement no later than thirty (30) days from **February 25, 2013**.

ⁱ <http://transition.fcc.gov/web/jatd/neca.html>

ⁱⁱ <http://www.usac.org/hc/tools/detail-disbursement-data/default.aspx>

CERTIFICATE OF ELECTRONIC SERVICE

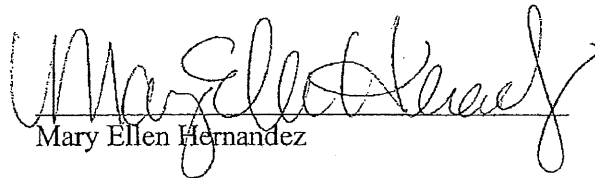
I, the undersigned, do hereby certify that on the 26th day of February, 2013, a true and correct copy of the above and foregoing was sent electronically, addressed to the following:

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Mary Ellen Hernandez

ATTACHMENT 2

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF)
TERRAL TELEPHONE COMPANY FOR FUNDING)
FROM THE OKLAHOMA UNIVERSAL SERVICE)
FUND)

CAUSE NO. PUD 201200183

FILED
APR 24 2014

HEARING: October 24, 2013, in Courtroom B
2101 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105
Before James L. Myles, Administrative Law Judge

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

APPEARANCES: Kendall W. Parrish and Ron Comingdeer, Attorneys
representing Terral Telephone Company ("Terral")
Kimberly Prigmore, Assistant General Counsel, *representing* the
Public Utility Division, Oklahoma Corporation Commission ("PUD")
Jack G. Clark, Jr. Attorney *representing* Verizon companies¹ ("Verizon")
Nancy Thompson, Attorney *representing* Sprint Communications
Company, L.P., Sprint Spectrum L.P., Virgin Mobile USA, L.P.,
Nextel West Corp. (the Sprint companies); T-Mobile Central LLC,
d/b/a T-Mobile; and tw telecom, Inc. (collectively, "Sprint")
William L. Humes and Nicole A. King, Assistant Attorneys General,
Office of the Attorney General, State of Oklahoma ("AG")

REPORT OF THE ADMINISTRATIVE LAW JUDGE

Upon thorough review of all the testimony, briefs and other filings in this cause, and review of the arguments of counsel and evidence presented at the hearing on the request for reconsideration, the undersigned Administrative Law Judge ("ALJ") submits this Report of the Administrative Law Judge ("ALJ Report") to the Corporation Commission of Oklahoma ("Commission"). Included in this Report are the ALJ's recommended findings of fact and conclusions of law.

I. SUMMARY OF THE RECOMMENDATION

The ALJ recommends the Commission determine that Terral Telephone Company is eligible to receive funding for primary universal services representing lost Federal Universal

¹ These companies include MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services ("Verizon Access"); MCI Communications Services, Inc. d/b/a Verizon Business Services; Verizon Long Distance, LLC; TTI National, Inc.; Teleconnect Long Distance Service & Systems, d/b/a Telecom*USA and Teleconnect; Verizon Select Services, Inc.; and Celco Partnership and its commercial mobile radio service subsidiaries operating in the State of Oklahoma (collectively doing business as "Verizon Wireless")

Service Fund support ("USF") pursuant to 17 O.S. § 139.106(K)(1)(a), covering the period beginning July 1, 2012, forward as detailed herein, subject to an audit/true-up to be performed by the Administrator of the amount to be paid and periodic true-ups by Terral.

II. PROCEDURAL HISTORY

On August 6, 2012, Terral filed its application seeking reimbursement from the Oklahoma Universal Service Fund ("OUSF") pursuant to 17 O.S. §§ 139.106 and 107. The application was filed using forms developed by the PUD and required by OAC 165:59-3-61 to be used when making a request for funding. Terral sought funding pursuant to 17 O.S. § 139.106(K) for a decrease in revenue from the federal universal service fund and/or a reduction in revenue/increase in cost from existing or future federal or state regulatory rules, orders, or policies or by federal or state law. In addition to the mandatory forms, Terral provided with its application, a more detailed explanation of its request including relevant provisions of the Federal Communications Commission ("FCC") order² that precipitated the reduction in revenues underpinning Terral's application.

On August 23, 2012, the Commission issued Order No. 601263 granting Terral's motion for a protective order.

On August 27, 2012, Verizon filed a Motion to Intervene and on August 29, 2012, Sprint filed its Motion to Intervene. On September 5, 2012, Terral filed an Objection and Motion to Strike Sprint's Notice of Hearing on its Motion to Intervene and on September 10, 2012, Terral filed Objections, Motions to Strike and Briefs in Support against Sprint and Verizon's Motions to Intervene. On September 25, 2012, the Commission issued Order Nos. 602415 and 602416

² FCC Report and Order and Further Notice of Proposed Rulemaking released November 18, 2011, in WC Dockets No. 10-90, *et al.* (FCC Release No. 11-161). The order is referred to as the *USF/ICC Transformation Order* and is also referred to in some of the pleadings in this cause as the *CAF Order*.

granting Sprint and Verizon's motions to intervene on an initially limited basis. The order provided that Sprint and Verizon's participation was initially limited in that they were not allowed to conduct any discovery until after the recommendation of the administrator was issued in the cause.

On November 5, 2012, Terral filed an amended application. The Amended Application sought lump sum support for the period July 1, 2012, through October 31, 2012, in the amount of \$70,022.52 and monthly recurring support beginning November 1, 2012, in the amount of \$26,258.44.

On February 25, 2013, the OUSF Administrator filed its Notification of Recommendation by Administrator for Reimbursement from the Oklahoma Universal Service Fund recommending approval of Terral's request for funding, as follows:

\$70,022.52 for primary universal services representing lost Federal USF covering the period July 1, 2012 through October 31, 2012; monthly payments of \$17,505.63 for the months of November 2012 and December 2012; and, recurring monthly reimbursement of \$26,258.44 starting January 1, 2013, subject to periodic true-ups by Terral. (Administrator's Recommendation, Page 4)

On March 11, 2013, Sprint and Verizon jointly filed a Request for Reconsideration.

On March 26, 2013, Terral filed a Motion for Hearing on the Sprint and Verizon Request for Reconsideration. Thereafter, by Order No. 611203, issued on May 7, 2013, the Commission ordered the ALJ to process the case in the manner he deemed most appropriate to develop and submit a report and recommendation to the Commission.

Also on March 26, 2013, Terral filed its Objection to Verizon's First Set of Data Requests to Terral Telephone Company. Arguments on the Objections were heard by the ALJ on the morning of April 4, 2013, and at the conclusion thereof, the ALJ announced that Terral's objection was overruled. Later that day, during the afternoon of April 4, 2013, by electronic mail, Terral Telephone Company advised the ALJ and other parties of record of its intent to

lodge oral exceptions to the Administrative Law Judge's oral ruling announced that morning, and its request for oral arguments on the exceptions before the Commission *en banc*, pursuant to OAC 165:5-13-5(a)(1). On April 11, 2013, Terral filed its written Motion for Oral Argument of Exceptions requesting argument of its exceptions to the ruling of the ALJ before the Commission *en banc*. On April 15, 2013, Verizon filed its Statement in Support of Ruling of ALJ overruling the Objection by Terral to Verizon's First Set of Data Requests. The Objections were ultimately resolved by the parties as memorialized by Order No. 613949 issued by the Commission on July 18, 2013, as corrected by Order *Nunc Pro Tunc* No. 614407 issued by the Commission on August 1, 2013.

On April 10, 2013, PUD filed its Objections to Sprint's First Set of Data Requests to PUD Staff. The Commission issued Order No. 611201 overruling Staff's objections on May 7, 2013.

On April 11, 2013, Verizon filed a Motion to Compel seeking an order requiring PUD Staff to respond to Verizon's Data Requests to PUD Staff. At the hearing on the motion, Counsel for Verizon announced that Staff had issued answers to the discovery requests at issue, that the Motion was now moot and that Verizon therefore was withdrawing the motion to compel. The Commission issued Order No. 611202 Allowing the Withdrawal of Verizon's Motion to Compel on May 7, 2013.

On April 26, 2013, Terral filed a Notice of Approval Date of Interim OUSF Funding.

On August 2, 2013, Sprint filed its Supplement to Request for Reconsideration.

On August 29, 2013, the Commission issued Order No. 615343 establishing a procedural schedule in this cause.

On September 6, 2013, in accordance with the procedural order No. 615343, Sprint filed their Brief in Support of Request for Reconsideration and Verizon filed its Statement of Position in support of the request for reconsideration.

On October 4, 2013, in accordance with the procedural order No. 615343, PUD filed its Brief in Support of Administrator's Recommendation; and, Terral filed its Brief in Support of Administrator's Recommendation and its Pre-filed Testimony of Charles C. Curtis.

On October 9, 2013, Terral filed its Objections to Sprint's Data Requests to Terral. On October 16, 2013, the ALJ presided over a hearing on Terral's Objections to Sprint's Data Requests to Terral. At the conclusion of the hearing the ALJ sustained the objections and stated that pursuant to OAC 165:5-9-2(b)(2)(B) that he would memorialize the ruling in the upcoming Report and Recommendation of the ALJ to be prepared subsequent to the hearing on the merits.

On October 15, 2013, in accordance with the procedural order No. 615343, Sprint filed its Rebuttal Brief in Support of Request for Reconsideration.

On October 21, 2013, PUD, Terral, Verizon, and Sprint filed their Witness and Exhibit Lists.

On October 22, 2013, Terral filed the Summary of the pre-filed testimony of its witness, Charles C. Curtis.

On October 24, 2013, the hearing on the merits was held before the ALJ. After hearing all the evidence and at the conclusion of the hearing, the ALJ took the cause under advisement. In addition, and pursuant to the agreement of the parties, the date for filing proposed findings of fact and conclusions of law was extended from November 8, 2013, as set forth in the Procedural Order, to November 15, 2013.

On November 6, 2013, Sprint filed its Late-filed Exhibits.

On November 15, 2013, Verizon filed proposed findings of fact and conclusions of law; Sprint filed proposed findings of fact and conclusions of law in the form of a proposed ALJ report; PUD filed a proposed report of the Administrative Law Judge; and, Terral submitted its

proposed findings of fact and conclusions of law to the parties, which were then filed in the Court Clerk's office on November 18, 2013.

III. SUMMARY OF THE EVIDENCE AND ARGUMENTS

Recommendation of the Administrator of the OUSF

After its review of the application and supporting documentation supplied to Staff, Staff made a Notification of Recommendation by Administrator for Reimbursement from the Oklahoma Universal Service Fund which was filed herein on February 25, 2013, ("Recommendation"). The following summarizes the information that was contained within the Recommendation.

On November 18, 2011, the FCC released and published its Inter-Carrier Compensation and Universal Service Transformation Order (FCC 11-161, "Order"), which provided a staged transformation of both inter-carrier compensation charges to a bill-and-keep environment, as well as modifications to Universal Service High Cost funding to price cap, mobile, CLEC and rate of return carriers. With regards to the Order's impact on Terral, the new FCC Order reduces Terral's interstate switched revenue requirement by 5% per year, net changes in inter-carrier compensation revenue associated with lower rates, as well as reductions to both USF High Cost Loop ("HCL") and Interstate Common Line Support ("ICLS"). USF HCL was 'double-capped' for Terral, in that capital and operating costs were reduced in the calculation of un-separated cost per working loop. Then, HCL was capped again when added to ICLS and compared to the FCC mandated cap of no more than \$250 per line per month. In addition, the Order required the same capital and expense reduction limits be placed on ICLS. However, the Order fell short of implementing the limits to ICLS and asked for comment as to how such limits would be implemented. (Recommendation, pgs. 1 & 2.)

On July 1, 2012, the limits and caps associated with the Order were implemented for Terral, and Terral began to receive less Federal USF as a result of the new limits and caps from the Order. (Recommendation, p. 2.)

On August 6, 2012, Terral Telephone Company filed an Application seeking reimbursement for Primary Universal Services from the Oklahoma Universal Service Fund. Based on the Order, the capital and operating cost limits are phased in 25% in 2012, 50% in 2013 and 100% by January 2014. In addition, the \$250/line per month cap for total USF received is also phased in 1/3rd in 2012, 2/3rd for calendar year 2013 and fully phased in beginning January 2014. Terral's application calculated its ongoing losses based on the actual losses for 2012 and estimated losses for January through June 2013 based on the FCC Order using the latest filed data. Terral had calculated the initial lump sum of losses representing July 2012 as well as monthly recurring amounts, beginning August 1, 2012, as the total losses from the FCC Order, between July 2012 and June 2013, divided by 12 months. The initial application was filed when the Connect America Fund ("CAF") Order was implemented but actual numbers were not yet publically available. Terral had previously supplied estimates based on confidential schedules provided by NECA. As a result, Terral filed an amended application on November 5, 2012, reflecting actual lump sum losses from July 2012 through October 2012 and revised monthly recurring losses, beginning November 2012, based on revised 12 month losses incorporating the publically available revisions. (Recommendation, p. 2.)

PUD determined that Terral Telephone Company is an eligible local exchange telecommunications service provider. Terral Telephone Company is the incumbent local exchange carrier for Study Area 432029. Terral Telephone Company serves less than seventy-five thousand access lines.

K. 1. Each request for OUSF funding by an eligible ILEC serving less than seventy-five thousand access lines shall be premised upon the occurrence of one or more of the following:

a. in the event of a Federal Communications Commission order, rule or policy, the effect of which is to decrease the federal universal service fund revenues of an eligible local exchange telecommunications service provider, the eligible local exchange telecommunications service provider shall recover the decreases in revenues from the OUSF.

K. 2. The receipt of OUSF funds for any of the changes referred to in this subsection shall not be conditioned upon any rate case or earnings investigation by the Commission. The Commission shall, pursuant to subsection D of this section, approve the request for payment or adjustment of payment from the OUSF based on a comparison of the total annual revenues received from the sources affected by the changes described in paragraph 1 of this subsection by the requesting eligible local exchange telecommunications service provider during the most recent twelve (12) months preceding the request, and the reasonable calculation of total annual revenues or cost increases which will be experienced after the changes are implemented by the requesting eligible local exchange telecommunications service provider. (Recommendation, pgs. 3 & 4.)

PUD recommended approval of a lump sum reimbursement amount of \$70,022.52 for the primary universal services representing lost Federal USF covering the period July 1, 2012 through October 31, 2012. PUD recommended approval of monthly payments of \$17,505.63 for the months of November 2012 and December 2012. In addition, PUD recommended approval of recurring monthly reimbursement of \$26,258.44 starting January 1, 2013, subject to periodic true-ups by Terral. (Recommendation, p. 4.)

Argument of OUSF Administrator

Counsel for PUD stated that the Commission must continue to interpret and apply the OUSF statutes in the same manner as it has done since inception of the OUSF. Counsel further stated that there simply has been no court of competent jurisdiction declaring the OUSF statutes to be unconstitutional, and no court has determined the OUSF to be a public fund. Counsel then

added that the Commission is a tribunal of limited jurisdiction, and it only has such authority as is expressly or by necessary implication conferred upon it by the Oklahoma Constitution and statutes of the state. Counsel further noted that the Commission also has the duty of interpreting the statutes it is charged with implementing; however, the Commission *does not* have the power or authority to invalidate a statute for constitutional repugnancy. Counsel then cited and read relevant parts of the *Dow Jones & Co., Inc. v. State ex rel. Okla. Tax Comm'n*, 1990 OK 6, ¶ 6, 787 P.2d 843, 845, case and the *M & W Restaurants, Inc. v. Okla. Alcoholic Beverage Laws Enforcement Comm'n*, 63 P.3d 559, 2003 OK CIV APP 12, case. Counsel recited from the *Dow Jones* case, "[w]ithin the framework of Oklahoma's tripartite distribution of government powers, the authority to invalidate an unconstitutional enactment resides solely in the judicial department. Art. 7, § 1, Okl. Const. confers on administrative agencies only that quantum of "judicial power" which is necessary to support their exercise of adjudicative authority in individual proceedings brought before them. The power assigned to boards and commissions is not coextensive with that which is vested in the courts." Counsel then recited from the *M & W Restaurants, Inc.* case, "Consequently, a challenge to the constitutionality of the law and rule in an administrative proceeding would be futile. If a party believes that the administrative agency lacks authority to make a determination of the matter, then it should seek judicial review of that question. Although generally judicial review should not take place until administrative remedies are exhausted, but premature judicial review is permissible when administrative remedies are inadequate. Remedies are inadequate when unavailable, ineffective or futile to pursue." Counsel argued, therefore, Sprint's constitutional argument before this Commission cannot be addressed. Sprint must go to the courts. Counsel added that it was clear and without question that the Commission cannot declare any statute unconstitutional.

Further, Counsel argued that in Sprint's thirty-four (34) page Rebuttal Brief, Sprint did not even address this issue that PUD raised in its Brief in Support of the OUSF Administrator's Recommendation. Counsel then stated, once again, that the Supreme Court of Oklahoma had been clear and without question on this issue.

Counsel went on to state that the genesis of Sprint's argument is that the OUSF is a public fund and, therefore, proof of need must be determined prior to any OUSF disbursements. Counsel then gave examples of two problems with the previous statement: 1) Adoption of this position requires the Commission to ignore the existing language of 17 O.S. § 139.107(D) which provides the OUSF is not state monies, and therefore is not a state fund; and 2) the Commission must ignore the existing language of 17 O.S. § 139.106(K)(2) which provides there shall be no rate review or earnings investigation or, in other words, proof of need. Counsel then argued that to ignore the existing statutory language, the Commission would first have to find 17 O.S. § 139.106(K)(2) and § 139.107(D) unconstitutional in order to relieve the Commission of its duty to follow the law as currently written. Counsel further stated because Sprint alleges funds are distributed to private entities without any governmental controls required to obtain the appropriations, 17 O.S. § 139.106(K) as written and currently interpreted by the Commission violates Art. 10 § 14 of the Oklahoma Constitution, thus rendering it unconstitutional. Counsel then argued that all of these arguments have the result of the Commission striking down or interpreting provisions of the OUSF statutes as being unconstitutional. Counsel further argued that such a request by Sprint cannot be granted by this Commission because such action would be unlawful and outside the scope of the Commission's authority and jurisdiction as the Oklahoma Supreme Court has instructed. Counsel then stated that the Commission must continue the long held, consistent and lawful interpretation and application of the OUSF statutes.

Counsel argued that Sprint may claim it is not asking for a constitutional determination, but rather a constitutional interpretation. Counsel then cited the United States Supreme Court case of *Elgin v. Depart. of the Treasury*, 132 S.Ct. 2126. Counsel explained that this case stands for the proposition if an agency must alter its statutory interpretation for a statute to be constitutional versus actually challenging the constitutionality of the statute as written is a "dubious distinction" at best. Therefore, Counsel stated, it is a distinction without a difference.

Counsel then stated Sprint alleges 17 O.S. §139.106(K) is unconstitutional or the Commission must interpret § 139.106(K) in a manner that renders the statute constitutional at least 9 times just in its Supplement to Request for Reconsideration and its Brief in Support of its Request for Reconsideration. Counsel then noted that was just in this docket.

Counsel explained that the only court to take up the question of whether the OUSF was a public fund was the District Court of Oklahoma County in *Okla. Corp. Comm'n v. Solix*. Counsel explained that there was an error in her brief on page 5, and the correct citation of Solix's Brief was Solix, Inc.'s Reply to Intervening Plaintiff's Response to Solix, Inc.'s Motion for Summary Judgment filed on May 21, 2012. Counsel stated the District Court Judge did have the *Wright* Case before him. Furthermore, Counsel argued that PUD did not argue before the District Court in the *Solix* Case, however, the Agency Counsel did. Therefore, Counsel explained that in the Office of the General Counsel, PUD attorneys represent PUD, and the Agency Counsel represents the Commissioners and the agency, as a whole, in matters outside of the Commission.

Further, Counsel explained that the *Wright* Case had nothing to do with the OUSF, and because Sprint cannot ask this Commission to determine or interpret a statute's constitutionality, the *Wright* Case is irrelevant and a nonissue. Counsel further explained that within the framework of Oklahoma's tripartite distribution of government powers, the authority to

invalidate an unconstitutional enactment resides solely in the judicial department, and Sprint does not have to exhaust its administrative remedies. Counsel concluded that a complete and thorough analysis of the PST Indemnity Fund and the OUSF sheds light on the numerous differences between the funds. Accordingly, and consistent with an analysis of the OUSF statutes, the OUSF is not a state fund, state monies, or a public fund and any analysis of §139.107(D) would have to be considered in the context of Art. 10 § 14.

For example, Counsel explained that 17 O.S. §139.107(D) states the funds in the OUSF are not state monies; however, taxes are state monies. Counsel then stated that Sprint has said the OUSF is comprised of state monies during the hearing. Therefore, Counsel explained one has to do an analysis to see if the OUSF assessment is a tax under Art. 10 § 14 of the Oklahoma Constitution, which is clearly a constitutional question for the courts and not an administrative agency. Counsel stated that an administrative agency is powerless to strike down a statute for constitutional repugnancy. Counsel further stated the Commission must follow the statutes as written, and the Commission must continue to interpret and apply the statutes in the same manner as it has since inception of the OUSF.

Counsel discussed in detail PUD's position on 17 O.S. §§139.106 (G) and (K) in PUD's Brief and how it was not inconsistent with the position taken by the Applicants in Cause No. PUD 201200040, but there is much confusion over Form PUSF-1. Counsel explained that Form PUSF-1 was created in 1997 and has gone through no substantive changes since that time. Counsel added that this form has been interpreted by PUD and the industry in the same manner since inception of the OUSF. Only recently, Counsel argued has there been an alleged "problem" with this form. However, Counsel further argued that there was no question Terral complied with OAC 165:59-3-62(l) and completed the requisite form according to the rule.

In the future, Counsel added, Form PUSF-1 may be revised to more clearly reflect the underlying statutory language of 17 O.S. § 139.106. In its current version, Counsel stated Form PUSF-1 does not clearly reflect every situation for which a carrier might file for Primary Universal Services. Counsel explained that Applicants need the ability to fill out the form to their particular circumstance. Accordingly, Counsel concluded, because Terral met the requirements of 17 O.S. § 139.106(K)(1)(a) and the OUSF Administrator complied with the rule and statutory requirements, Sprint's Request for Reconsideration must be rejected.

Counsel stated that it is asserted by Verizon and Sprint that Terral and the OUSF Administrator did not comply with OAC 165:59-3-62(b), but both Verizon and Sprint's argument was based on a faulty premise. Counsel argued that Terral and the OUSF Administrator complied with OAC 165:59-3-62(b)

Counsel further stated it was clear from reading the rule that a company must either make every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service and provide documentation that it has sought alternative funding sources or provide an explanation for why alternative funding was not available. Counsel further argued Sprint is clearly reading a requirement into the rule that is not there.

On August 2, 2012, Counsel stated that Terral filed a Petition for Waiver with the FCC to unfreeze Part 36 Category Relationship and submitted documentation of this waiver request to the Commission with its Request for Funding from the OUSF. Counsel further stated that the applicable rule goes on to state if one of the conditions precedent are met, "the company shall not be precluded from having its application processed."

Counsel argued that the OUSF Administrator complied with the provisions of OAC 165:59-3-62(b), and pursuant to the applicable rule, the OUSF Administrator verified that Terral provided documentation that it sought alternative funding. Counsel further argued that since

Terral sought alternative funding and provided documentation, based on the information provided to the OUSF Administrator, Terral could not be precluded from having its Application processed.

Furthermore, Counsel argued that there was nothing in the applicable statute or rule that required a carrier to make application to the FCC much less submit a "Total Cost and Earnings Review, and the Commission is not vested with the authority or power to invade a company's internal management discretion. Therefore, Counsel argued that it was not for the Commission to decide what kind of waiver Terral must seek; this was a decision for Terral's management.

Counsel stated that Terral's Application for funding was filed at the same time as Cause No. PUD 201200184. South Central did file the appropriate Petition for Waiver with the FCC, and on July 29, 2013, the FCC issued an Order which dismissed the Petition filed by South Central. Counsel explained that the FCC stated that because alternative remedies and additional support are available through a state process in Oklahoma, the FCC was dismissing South Central's petition without prejudice.

Counsel further explained if Terral is approved for funding from the OUSF, and then Terral is granted funding from the FCC, Terral must repay the OUSF. Counsel stated there is a process in the rules whereby Terral must repay the money because the rules do not allow double recovery.

Counsel noted that Terral's consultant explained in his written testimony, there are no broadband internet costs included in the lost USF revenue Terral requests to recover from the OUSF.

In summary, Counsel stated that the Commission must continue to interpret and apply the OUSF statutes in the same manner as it has done since inception of the OUSF, and there simply has been no court of competent jurisdiction declaring the OUSF statutes to be unconstitutional or

no court has determined the OUSF to be a public fund. Counsel concluded that the Commission may not address constitutional questions raised by Sprint.

Summary of the Testimony of Charles C. Curtis on behalf of Terral Telephone Company

Charles C. Curtis testified on behalf of Terral. Mr. Curtis' testimony, as summarized in the Prefiled Testimony Summary of Charles C. Curtis filed on October 22, 2013, is set forth below. Cross-examination of Mr. Curtis is set forth in the transcript of the hearing on the merits and will not be summarized in full in this report. References to portions of Mr. Curtis' testimony, including both his prefiled testimony and his testimony at the hearing on October 24, 2013, will be included in the Analysis section below.

Prefiled Testimony Summary as filed by Terral: The purpose of my testimony is to support Terral's Request for OUSF Funding and the Recommendation of the OUSF Administrator issued February 25, 2013, approving Terral's request. Contrary to claims made by Sprint and Verizon Companies, Terral has made all reasonable and timely efforts to obtain alternative funding sources to recover lost revenue resulting from the implementation of the FCC's USF/ICC Transformation Order. Terral initially intended to file a limited waiver with the FCC requesting a waiver from the effects of the USF/ICC Transformation Order (CAF Order). However, that option is not likely to be successful because the FCC dismissed similar waivers filed by other rural ILECs located in states where recovery of lost revenue from the USF/ICC Transformation Order could be obtained through state funding mechanisms. Alternatively, Terral filed a petition with the FCC to lift the freeze of its separations factors, which would be a more efficacious and permanent solution for revenue lost from the CAF Order. A copy of the waiver was given to the Administrator with background and status updates, to the Administrator's satisfaction. Terral could not recover the lost federal USF from its subscribers. Terral serves just

over 200 subscribers in very rural areas of Jefferson County. In order for Terral to recover its lost federal USF revenue from its subscribers, rates would have to be increased over \$125 per line per month. Sprint's charge that Terral failed to submit evidence for its request as well as efforts in obtaining alternative sources of recovery are patently false. Terral has provided the Administrator with the copy of its filed waiver with the FCC, requesting the freeze of its separations factors be lifted, as well as publically available documents, obtained from USAC and the FCC, reflecting the actual amount of lost federal USF revenue attributable to Terral. Terral provided the Administrator with all evidence required and in accordance with 17 O.S. Section 139.106(K). Lastly, Sprint's charge that Terral is in violation of 17 O.S. Section 139.108 takes language from Terral's correspondence with the FCC out of context and demonstrates a misunderstanding of the separations rules, particularly with the allocation of broadband costs and high cost USF mechanisms.

The FCC's USF/ICC Transformation Order, released in late 2011, placed a series of limits and caps on federal high cost USF received by rate of return ILEC's, which became effective July 2012. Specifically, the Order placed operating and capital cost limits on the existing federal USF High Cost Loop mechanism, calculated through complex statistical models entitled Quantile Regression Algorithms or QRA. In addition, after federal High Cost Loop funding is calculated with the caps, the High Cost Loop funding is added to ICLS funding and compared to a \$250 per line per month federal cap for these funds. Regarding the QRA, the limits are based on FCC published coefficients, based on costs per working loop, and applied to each recipient's cost per loop. If operating and capital costs, combined, exceed the QRA limits, those amounts above the cap are no longer eligible for funding from the federal USF and recycled through the federal High Cost Loop mechanism. The Administrator recommended funding of Terral's monthly recurring loss of federal USF revenue from the QRA limits in the

amount of \$5,871.94 per month. The QRA limits are being phased in by the FCC with the full phase of the QRA limits being effective in 2015, pending any further actions. Once the federal High Cost Loop funding is calculated, it is added to Terral's Interstate Common Line Support (ICLS), which represents recovery of the interstate portion of its subscriber plant costs. The sum of both federal funds are divided into access lines and compared to the cap of \$250 per line per month. If the combined amount of USF High Cost funding exceeds this cap, the excess funds are no longer eligible for interstate recovery by Terral. The Administrator found that the monthly recurring impact of the \$250 per line cap for Terral is \$20,386.50 per month. The full impact of the \$250 per line per month federal USF cap is also subject to phase-in by the FCC. In essence, the FCC's Order double-capped Terral's federal USF cost recovery, first with QRA limits on High Cost Loop, then again with \$250 per line cap on combined High Cost Loop and ICLS funding.

The amounts of both High Cost Loop and ICLS represent historical costs (capital costs plus operating expenses) incurred by Terral to provide universal service in its designated serving area. Each year, Terral is required to certify its use of funds received are for this purpose. The three options Terral has to obtain compensation from these lost revenues are from FCC waiver of frozen separations factors, subscriber rate increase, or OUSF request. Terral has filed for a waiver of the separations factor freeze and is awaiting decision by the FCC. Approval of this waiver could vastly reduce or eliminate the need for OUSF from Terral's request. However, the FCC has yet to act on the petition, going on over one year since its initial filing. Terral cannot afford to rely solely on this waiver petition as its only alternative, because of the indefinite status. Terral already provides basic local service at comparable rates, as will be explained later in my testimony.

In 2001, Terral elected to have factors representing its categorical cost relationships frozen for an interim period of five years, or until the FCC passed comprehensive separations reform measures, whichever occurred first. No such measures have been implemented and, instead, the FCC has extended the freeze. It is currently 12 years since Terral made its election to freeze these important factors, 7 years past the initially prescribed interim period. Because Terral has continued to invest in its plant and equipment to provide quality services to its customers, these factors frozen at 2001 levels have suspended Terral from being able to apply FCC Part 36 rules to categorize its current networks costs based on its current network use of facilities. Lifting the freeze would permit Terral to categorize its network costs based on its current use and recover costs in accordance with non-frozen Part 36 rules. This would shift costs from areas reliant on High Cost Loop and ICLS funding, to interstate special access and either significantly reduce or potentially eliminate the revenue lost from the USF/ICC Transformation Order. The shift caused from lifting the freeze would lower USF related costs and, as a result, reduce or eliminate the lost revenue associated with the CAF Order and for compensation of lost federal USF being requested in this cause. The current factor freeze locked a significant portion of network costs to message toll subscriber plant network elements, based on Terral's network usage 13 years ago. These same cost elements are used in reporting costs for recovery from USF High Cost Loop and ICLS.

Were the FCC to approve the waiver, Terral could reassign costs based on actual current use of plant, rather than using frozen factors based on 2001 usage. This would shift a portion of cost recovery from federal USF elements to special access pricing. This would reduce costs reported for USF recovery and, subsequently, reduce the lost revenue associated with CAF Order.

Terral has sent correspondence to former and current FCC Chairmen. They have also visited with the FCC Wireline Competition Bureau Staff and FCC Commission staff to address the need for FCC approval and answer any questions related to the waiver request. However, it has been over one year since filing this request and there is still no decision from the FCC. The FCC Wireline Competition Bureau, in early 2013, wrote a letter stating that, rather than rule on the waiver, it wished to recommend it to the Joint Board. However, the Joint Board has specifically addressed the factor freeze issue in its 2010 filing with the commission, without any action taken. We have no evidence or reason to believe the Joint Board will address this issue since it already has addressed it over three years ago. And even if it did, the Joint Board would file its recommendations with the FCC and then the FCC would work towards some notice of proposed rule-making, utilizing the comment cycle.

The Administrator was given a copy of the filed waiver. Terral explained that the approval of the freeze lift request would shift costs, reduce the amount of lost revenue associated with the CAF Order and thereby reduce the need for OUSF in this cause, on either an ongoing or retroactive basis, depending on the nature of the eventual FCC decision on Terral's request. For example, if the FCC permitted the freeze be lifted retroactively to 2012, Terral would re-issue an interstate cost study, USF High Cost Loop-Data Collection Form and ICLS Form 509. To assure Terral doesn't receive double recovery, to the extent these retroactive adjustments reduce or eliminate the caps on Terral's USF high cost funding, Terral would file a retroactive adjustment for the same period and refund the difference to the OUSF. If the FCC approved the waiver without it being retroactive, Terral would not have to refile its cost or USF data and, subsequently, not have any changes in what it had received from OUSF for the same period. However, OUSF would be modified to reflect the changes on a going forward basis, assuming any subsequent OUSF funding was still required. In either case, any revenue increase resulting

from the lift of the frozen factors would go towards reducing or eliminating OUSF from this cause, either on a retroactive basis and/or prospective basis.

I provided the Administrator with the impact of the CAF Order calculated by and published on the USAC website. Anyone could access Terral's lost revenue by simply utilizing USAC's search tools and the FCC web site. I also provided the Administrator the QRA limits released by the FCC, by study area filing, which was published as an attachment to FCC Order and is available via the following hyperlink: <http://hraunfoss.fec.gov/edocspublic/auachmatcWDOC-3 19802A1.xlsx>. This data reflects Terral's filed actual costs per loop and its resulting QRA limited costs per loop. The only calculations required to arrive at the impact of QRA limits is to compare actual cost per loop to QRA limited cost per loop, publically provided by the FCC. Then, if the QRA limited cost per loop is less than study area actual cost per loop, the QRA limited cost per loop is used to compare to the National Average Cost per Loop (NACPL) to calculate USF to be received by Terral. The algorithm used to compare study area cost per loop to NACPL is to add 65% of study area loop costs between 115% and 150% of the NACPL with 75% of study area loop costs over 150% of the NACPL. By calculating this comparison with both study area actual cost per loop and QRA limited cost per loop, the reduction to USF attributable to the QRA is the difference between the two results.

Terral did not file a waiver of the FCC Order WTB 11-161, referred to as the CAF Order, but did consider filing a waiver of the rules adopted in the CAF Order with the FCC. Terral decided not to request a waiver from the CAF Order for two reasons. First, while Terral was preparing a CAF Order waiver request, it became aware of an FCC Order granting the waiver petition of Eastex, Inc., in which Eastex had requested a waiver of the frozen factors. At that time, Terral decided not to request a waiver from the CAF Order but instead file a waiver of the frozen factors because it appeared more likely that a frozen factors waiver would be granted.

Secondly, the FCC had not yet acted on any CAF Order waiver requests. The lack of FCC decisions on these requests gave Terral the perception that if it had filed for a waiver of the CAF Order rules, such decision from the FCC may not happen for a while. Following the filing of Terral's waiver request, the FCC has twice ruled that applicants for waiver of those rules who reside in a state with a potential state recovery mechanism would be dismissed, without prejudice.

The FCC's order, DA 13-1664, released July 29, 2013, dismissed South Central Oklahoma Telephone Association's (South Central) waiver request, without prejudice, due to the fact South Central could apply for lost revenue attributable to the CAF Order from the Oklahoma USF. DA 13-965, released April 30, 2013, dismissed, without prejudice, waiver requests from three ILEC's in the State of Texas. With regard to the Texas applicant's in DA 13-965, the Commission ruled,

"The Texas petitioners should first avail themselves of state remedies available to them pursuant to TEX. UTIL. CODE ANN. § 56.025(c) and 16 Tex. Admin. Code §26.406(b)(2) *before* (emphasis added) seeking a waiver from the Commission. Indeed, Border to Border sought relief under the Texas statute, requesting additional universal service funding from the state as it did with the Commission. Given the limits on federal universal service funding and the overall burden to consumers who contribute to the USF, we find that the Texas petitioners have not demonstrated good cause for relief because an alternative avenue for relief is available."

In South Central's waiver request, the Commission made a similar finding:

"We find that the availability of an alternative means of support under Oklahoma law, which South Central requested well in advance of filing the instant petition, precludes a finding that additional support from this Commission is warranted at this time. Because *it appears that South Central is eligible to receive OUSF support to offset reductions in federal high-cost universal service support as a result of the Commission's reforms,* (emphasis added) we cannot conclude that consumers in South Central's Oklahoma study area are at risk of losing voice or broadband services in these circumstances."

The existence of the OUSF eliminates the ability of Terral to meet the burden of proof that the caps and limits from the CAF Order would likely result in loss of service to Terral subscribers, according to the FCC.

According to Terral's Basic Local Exchange Tariff, approved by the OCC, Terral's Basic Exchange Local Rate for Residential service is \$14.00 per line per month and the same rate for Business is \$16.50 per line per month. Terral has no subscribers who continue to pay the lower 'grandfathered' rates listed in the 1998 tariff filing. That filing combined touch tone fees with the basic exchange rate. For subscribers who were charged both the touch tone fees and basic exchange rates, the new rates applied. For the few customers that still had rotary phones and were not charged touch tone fees, they were exempt from the new rates. However, there haven't been any rotary phone subscribers in Terral's exchange in quite some time. Therefore, there are no more subscribers paying the lower, pre-1998 filing rate. Terral's residential basic local exchange rates are at the national rate floor level of \$14. Per the FCC CAF Order, any ILEC that charges less than the rate floor must either make up the difference from its end user subscribers or absorb the lost USF equal to the difference between the number of subscribers times the rate below the rate floor less the number of the same subscribers times the national rate floor. In other words, for the 2013-2014 year, the FCC has deemed, with only a small exception, that Terral's residential end users are contributing enough to the recovery of loop costs that no reduction to USF High Cost Loop are necessary, based on end user rates. Terral offers a vacation service rate for Terral's vacation line service. Terral has two access lines subscribed as a vacation line. Each month, \$18 is reduced from federal USF to reflect the difference between these two vacation lines and the national rate floor. The lost FUSF revenue associated with these partial year service rates was not included in Terral's OUSF request.

At the time of the filing of its request, Terral served 215 residential and business customers. Based on the Administrator's recommendation, Terral would have to raise local rates nearly \$125 per line per month to recover those losses from end users. That rate increase would need to increase for each step of the CAF Order phase-in until the Order is fully implemented by 2015. The rates proposed by Sprint are not comparable to services provided by Terral. If you look at the tariff page filed in the testimony referred to in Sprint's brief, AT&T's metropolitan customers can call over 500,000 other residential and business telephone subscribers, with unlimited local usage and no toll charges for \$23 per month. A Terral customer can locally access only around 200 other subscribers, with the same calling scope, for \$14 per month. It's intuitive that the larger the amount of customers accessible through unlimited local calling scope, the higher the price of local service. It wouldn't be reasonable to charge Terral customers a local rate to reach approximately 200 customers for the same price an AT&T customer pays to reach over a half million businesses and residences. The cost to provide local service in the smaller, rural areas are not the same as the costs in metropolitan rate centers. Having larger, lower cost rate centers affords AT&T the ability average all rate centers to one single rate. Terral has no such privilege, having only one rate center, limiting access calling to just those subscribers in the Terral rate center. Calls to other neighboring rate centers, owned by AT&T and other carriers, incur toll charges, falling outside local exchange service. For these reasons, comparing a \$23 local rate for such a calling scope with Terral's limited calling capabilities at \$14 per month is a poor comparison.

Terral's ability to raise rates are constrained due to low density of subscribers, limits on pricing in the face of competition as well as adhering to Carrier of Last Resort obligations. Were Terral to raise its residential local exchange rates from \$14 to \$23, it would only raise approximately \$1,800 in additional monthly local service revenue. Compared to the amount of

lost federal USF revenue, the additional revenue raised from such a rate increase would cover only approximately 5% of the loss. However, Terral may not realize even the \$1,800 per month. Terral has a limit in its ability to raise local rates to increase local revenue. Beyond this limit, any further rate increases would have the opposite effect of lowering revenue, due to customers disconnecting because they can either no longer afford service, or have decided to change service to a wireless alternative. Terral is also a Carrier of Last Resort, which means, unlike any wireless carrier, it is required to serve any customer within its serving area. If a competitive carrier were to go out of business or discontinue service from Terral's area, Terral would be legally required to offer service to all of those customers who were previously served by that carrier. This obligation requires Terral to incur costs to serve every customer in its rate base, unlike any other provider. A wireless provider may cover only some subscribers where cell service is adequate, whereas Terral is required to serve the entire area. This places Terral at a disadvantage over any competitive provider in terms of pricing and service obligation.

Rates charged by Cox are not a valid comparison to Terral's rates and service area. Cox competes with AT&T and, as such, their rates are going to be more comparable with AT&T's, in terms of both price and scope of service. The rate provided in the same testimony referenced reflects a \$21 basic local rate for Cox customers in the Oklahoma City metropolitan area. Unlike Terral, Cox doesn't offer service in high cost, rural areas. Rather, Cox only offers service in high density, low cost, profitable metropolitan areas.

The only reasonable avenue for Terral is to request funding from the OUSF based on rights available under Oklahoma statutes. Terral provided the Administrator with the information required under subsection K of the OUSF Statute, a comparison of the total annual revenues received from the federal USF during the most recent twelve months preceding the request and prior to the implementation of the CAF Order and a reasonable calculation of the total annual

revenues from the federal USF which would be experienced by Terral following implementation of the CAF Order. These calculations were available from public sources.

There are no broadband costs reported in the USF for either High Cost Loop or ICLS. This means there is no lost federal USF revenue associated with broadband being request in this cause. Identification of broadband costs is determined by FCC rules, particularly 47 CFR Part 36 and Part 69 rules. High capacity special access service costs is located in a separate category not associated with either the intrastate jurisdiction or USF funding. For DSL offered over the same loop as tariffed voice service, the FCC only permits the assignment of DSL electronics costs to the interstate special access jurisdiction. These rules require no special treatment of the local loop cost is to be used in allocating DSL broadband since no additional costs are required to offer DSL over the same copper or fiber loop as voice service. In other words, FCC rules prohibit assigning any DSL or other broadband costs for USF cost recovery and no such broadband costs are included in either USF funds received or associated lost federal USF revenues requested in this cause.

Oklahoma consumers will not subsidize Terral's broadband internet prices. Based on current FCC separations and USF rules, there are no broadband internet costs included in the lost federal USF revenue Terral wishes to recover from OUSF. As a result, there are no broadband internet costs Terral is asking Oklahoma consumers to subsidize.

Matt Skinner, Public Information Manager, Oklahoma Corporation Commission

Matt Skinner, the Public Information Manager for the Oklahoma Corporation Commission, was called as a witness at the hearing on the merits as a result of Terral's objection to introduction of the response to the Open Records request made by counsel for Sprint, T-Mobile and tw telecom on October 16, 2013, which response was listed on Sprint, T-Mobile, and

tw telecom's exhibit list and attached to that list. As noted in the procedural history above, Terral objected to a data request from Sprint, T-Mobile and tw telecom requesting the amount paid to Terral in interim OUSF funding in this case, arguing that Terral does not have the information, that it is not information that Terral has tracked, and that the information is publicly available on the Universal Services Administration Company website:³

MR. PARRISH: That information is publically available on the -- on the USAC, or Universal Services Administration Company website. As you recall, we had -- we had a discovery dispute earlier in this cause between Terral and data requests that were filed by Verizon. We ended up resolving that dispute through -- by agreement, and part of that agreement resulted in Terral providing that publically available information, and also -- and the publically available information we provided also showed where and how to -- how to -- how to reach that publically available information. So it's very simple, it's very easy to go on the USAC website and find that information. It's published for everyone.

....
MR. PARRISH: The OUSF -- the interim OUSF funding that is being requested or implemented in this case is -- is from the publically -- publically available information.

THE COURT: So that even though it's interim, it's -- it still is available just like the regular--

MR. PARRISH: It is.

THE COURT: -- funding that's approved by way of an order?

MR. PARRISH: That's right.

THE COURT: All right. Thank you.

....
MR. PARRISH: So, again, it's publically available. It's not a number that Terral calculates or has -- is -- has tracked. We would have to -- Terral would have to do the exact same thing that -- that Sprint -- that we're asking Sprint to do in this case, which is go to the publically available information, calculate the number and you can -- you can reach the same number that Terral would, or that Staff would, or that your Honor would. If I gave you the -- if I gave you the website address, you could do the same thing. So, again, that's --

THE COURT: It's -- so it is not something that they normally, in the course of business --

MR. PARRISH: It is not -- the way I understand the DR, she's asking for what the total amount of interim OUSF funding is --

THE COURT: Right.

MR. PARRISH: -- has been received so far. That is not a number that Terral has currently available in its business records. It's a -- it's a calculation that would have to be made.

³ Oct. 16 Transcript at 9-10, 14-15.

Counsel for Sprint, T-Mobile, and tw telecom responded to Mr. Parrish's arguments that the information is publicly available by indicating that she would attempt to obtain the information through an examination of the USAC website information and confirmation of the amounts through an Open Records request for the information:⁴

MS. THOMPSON: With respect to the publically available information on the DR 4, let me address that first. It's difficult to know whether Staff – when you look at the USF – at the USAC disbursement site, there was direction in this case to start giving Terral, I think, interim funding of about \$26,000 a month. As of July of 2013, the amount of federal funding went down significantly in the two categories under which this application was processed for HCL and ICLS. So it's unclear to me whether we're to presume that the interim funding has correspondingly gone up but the the amount that – the USAC federal disbursements went down. If – if I am to take Mr. Parrish at his word, I guess then we are to presume that the interim OUSF funding significantly increased on a monthly basis as of July of this year. And if that's the case, then I will get it, and I can also confirm that through an open records request. It seems to me that when the company that's receiving the funding clearly has that information, that it's the easiest way to do it, is to do it through that rather than make Staff have to confirm that information through open records.

Summary of Mr. Skinner's testimony: Mr. Skinner testified that he is the person identified on the Commission's website as the person to whom open records requests are to be addressed.⁵ He testified that he received an email on October 16, 2013, from counsel for Sprint, T-Mobile, and tw telecom requesting the following information: "all amounts of interim OUSF funding paid pursuant to the application in Cause Number PUD 201200183," with the funding "broken down by date of each payment, amount of each payment and time period covered by

⁴ *Id.* at 11-12

⁵ The ALJ takes judicial notice of the following information located on the Commission's website:

Open Records Requests

All Oklahoma Open Records Act requests and questions concerning same should be directed to the Commission's Office of Public Information

Contact: Matt Skinner, 405-521-4180, m.skinner@occemail.com

Mailing Address

Matt Skinner

Oklahoma Corporation Commission -- Office of Public Information

Jim Thorpe State Office Building -- Room 310

2101 N. Lincoln Blvd.

Oklahoma City, OK 73105

each payment." He further testified that the email to him also copied Kimberly Prigmore, Brandy Wreath and Elizabeth Cates. Later that afternoon, Mr. Skinner sent an email response to the email request, stating "see attached" with two attachments, including an excel file attachment and a PDF attachment. Mr. Skinner verified that the information contained in the attachments was the same information attached to the Exhibit list as the response to the Open Records request.⁶ Mr. Skinner testified that the information came from Josephine Farkas, manager of the state funds program for Solix. Mr. Skinner explained that he sent the Open Records request to Jim Jones in PUD who forwarded the request to Ms. Farkas. At the conclusion of Mr. Skinner's testimony, the ALJ overruled Terral's request that Mr. Skinner's testimony be stricken on the grounds that Mr. Skinner is not qualified to authenticate the response to the Open Records request. The response to the Open Records request was thereafter admitted as Hearing Exhibit 7.⁷

IV. MOTIONS/OBJECTIONS

Terral's Objection to Sprint's Data Requests

On October 9, 2013, Terral filed its Objections to certain data requests issued to it by Sprint. Arguments on the objections were heard by the ALJ on October 16, 2013.

Counsel for Terral argued that the data requests were basically in three categories, being (1) a group of data requests for information related to the calculation of the OUSF contribution factor; (2) a group of data requests for information related to determining the PUD assessment fee; and, (3) a single data request asking how much interim OUSF funding Terral had received to date pursuant to its request in this case (data request 1-4).

⁶ See Exhibit List of Sprint, T-Mobile and tw telecom at numbered paragraph 1 ("Responses to Open Record Requests, including requests for amounts paid to date in interim OUSF funding in this cause.")

⁷ Oct. 24, 2013 Transcript at 148.

Counsel argued that the information requested pursuant to categories number 1 and 2 were irrelevant to this proceeding. He argued that this cause is filed pursuant to 17 O.S. § 131.106(K) for primary OUSF funding as a result of a decrease in FCC USF funding. He stated that the standard of review pursuant to 17 O.S. § 131.106(K)(2) is limited to a review of the revenues before and after the FCC order in question.

Counsel further argued that the OUSF factor calculation is not relevant to this case, nor is the PUD assessment fee. Both issues have their own dockets and have nothing to do with the question in this case, whether or not Terral qualifies for OUSF funding pursuant to 17 O.S. § 131.106(K).

Finally, Counsel argued that with regard to data request 1-4, the information requested by that data request is publicly available on the Universal Services Administration Company ("USAC") website. Therefore, Sprint could obtain that information independently and Terral should not be required to compile it for them.

Counsel for Sprint argued that an interpretation of the make-whole statute (17 O.S. § 131.106(K)) is one of the issues on the merits in this cause. Because of this, you cannot accept the argument of Terral Counsel that the determination of whether funding is allowed is limited to a review of the revenues before and after the FCC order in question on its face. Likewise, Sprint has argued that the OUSF is a public fund (or a trust fund as Terral argues alternatively) and under either situation you can only assess companies for the amount needed for universal service. Without reviewing the proof of need, it is possible to over assess contributors. Therefore, you cannot automatically presume that the information requested is irrelevant.

With regard to the allegedly publicly available information on the USAC website, Counsel stated that USAC funding started under this cause on an interim basis at approximately \$26,000 per month. As of July of 2013, federal funding decreased significantly in the two

categories at issue in this cause, HCL and ICLS. Counsel stated that it was not proper to presume that the interim funding had correspondingly gone up in the amount that the federal disbursements had gone down. She stated that it seemed that the easiest way to acquire the information would be from the company receiving the funding, but that if they were required to try to ascertain the amounts through the website they would attempt to do so.

In rebuttal, Counsel for Terral indicated that the information that was requested (the USAC publicly available information) was not information that was kept in the normal course of business. If Terral was required to answer the data requests as to that information, they would have to do the same process that Sprint would have to do to acquire the information. That is, go to the USAC website, determine the information, and make the calculations.

With regard to Sprint's argument as to the case being about the interpretation of 17 O.S. § 131.106(K), Counsel stated that was a legal issue. The requested information would not be relevant to a legal interpretation of a statute.

After hearing all the arguments, the ALJ found the arguments of Terral to be persuasive and sustained the objection.

As further explanation, I would state that prior to hearing the arguments on the objections, because the case had been pending for some time, I undertook a review of the entire case as it stood at the time. I also reviewed the applicable statutes and rules. I commented from the bench, and I still am of the opinion, that in most cases I would lean towards allowing most discovery. Commission proceedings, being administrative proceedings, are not bound by a strict adherence to the rules of evidence. In most instances, the more information the better.

However, in this case, with reference to these data requests and the objections thereto, I agree with the arguments of Terral. The information requested in categories 1 and 2 is not

relevant to the ultimate question of this case, nor would it likely lead to relevant evidence.

Therefore, I sustain the objections to those data requests for that reason.

With regard to the information characterized as category 3 information (data request 1-4), since that information is publicly available, since Terral does not keep that information in the normal course of business, and since Terral would be required to go through the same process of gathering the publicly available information that Sprint would be required to do, I also sustain the objection as to data request 1-4.

V. ANALYSIS

Introduction

Terral filed its application with the Commission requesting OUSF funding pursuant to 17 O.S. § 139.106(K). It based its request on an alleged decrease in federal USF funding resulting from the FCC's USF/ICC Transformation Order. This should be a relatively simple case. An analysis can be performed by applying the facts of the case to the law that governs the OUSF and a determination can then be made as to whether or not Terral is entitled to OUSF funding under the particular circumstances of the case. However, this case is more complicated than that because intervenors have argued that the Administrator of the OUSF has improperly interpreted and applied the law, despite having done so in a consistent manner for many years. Thus, the case contains numerous complicated "side" issues that have been raised by intervenors. These same issues are continually being raised within other OUSF cases that have been and continue to be filed pursuant to 17 O.S. § 139.106(K).

Arguments in this case have taken many different directions. It is easy to get lost within the minutiae of the arguments and the many twists and turns that they take. I choose to break this down to the fundamentals first, and then the other discussions. When determining my recommendation as to all the various issues brought before the Commission by the parties, I have

made a conscious effort to keep the fundamental principles of statutory construction in mind, together with the statutory purpose expressed by the legislature in its implementation of the OUSF.

Therefore, I will first address in this ALJ Report the base issue, whether or not, based upon the law and the facts, Terral's request for funding should be granted. I will then address the indicated "side" issues I mention.

The OUSF Statutory Scheme

The OUSF was created by the Oklahoma Legislature within the Oklahoma Telecommunications Act of 1997,⁸ at 17 O.S. § 139.106(A).⁹ Its purpose is expressed by the legislature "to promote and ensure the availability of primary universal services, at rates that are reasonable and affordable and special universal services, and to provide for reasonably comparable services at affordable rates in rural areas as in urban areas."¹⁰ Further, it is mandated that "(t)he OUSF shall provide funding to local exchange telecommunications service providers that meet the eligibility criteria established in this section."¹¹ One of the stated criteria is "(t)he incumbent local exchange telecommunications service provider ('ILEC'), its successors and assigns, which owned, maintained and provided facilities for universal service within a local exchange area on January 1, 1996"¹² This is the criteria to which Terral claims to meet in its request for OUSF funding.

There are two avenues by which an eligible entity can request OUSF funding. The first of those is 17 O.S. § 139.106(G) ("Subsection G"). Subsection G is general in nature and applicable to any eligible local exchange telecommunications service provider. It states that

⁸ 17 O.S. § 139.101 through 17 O.S. § 139.109 ("the Act")

⁹ "A. There is hereby created within the Corporation Commission the 'Oklahoma Universal Service Fund' (OUSF)."

¹⁰ 17 O.S. § 139.106(B)

¹¹ *Id.*

¹² 17 O.S. § 139.106(M)

"(a)ny eligible local exchange telecommunications service provider may request funding from the OUSF as necessary to maintain rates for primary universal services that are reasonable and affordable." It then goes on to list five specific circumstances for which funding will be allowed, together with a final general provision that allows funding "(f)or other purposes deemed necessary by the Commission to preserve and advance universal service."¹³

The second avenue by which an eligible entity can request OUSF funding is 17 O.S. § 139.106(K) ("Subsection K"). Many in the telecommunications industry commonly refer to this as the "make-whole statute." Subsection K is specific in nature, and is applicable to ILECs serving less than 75,000 access lines, of which Terral is one. Terral has stated throughout this cause that Subsection K is the authority upon which it relies in its request for funding. Subsection K is set forth below in its entirety.

K. 1. Each request for OUSF funding by an eligible ILEC serving less than seventy-five thousand access lines shall be premised upon the occurrence of one or more of the following:

a. in the event of a Federal Communications Commission order, rule or policy, the effect of which is to decrease the federal universal service fund revenues of an eligible local exchange telecommunications service provider, the eligible local exchange telecommunications service provider shall recover the decreases in revenues from the OUSF,

b. if, as a result of changes required by existing or future federal or state regulatory rules, orders, or policies or by federal or state law, an eligible local exchange telecommunications service provider experiences a reduction in revenues or an increase in costs, it shall recover the revenue reductions or cost increases from the OUSF, the recovered amounts being limited to the net reduction in revenues or cost increases, or

c. if, as a result of changes made as required by existing or future federal or state regulatory rules, orders, or policies or by federal or state law, an eligible local exchange telecommunications service provider experiences a reduction in costs, upon approval by the Commission, the provider shall reduce the level of OUSF funding it receives to a level sufficient to account for the reduction in costs.

¹³ 17 O.S. § 139.106(G)(6)

2. The receipt of OUSF funds for any of the changes referred to in this subsection shall not be conditioned upon any rate case or earnings investigation by the Commission. The Commission shall, pursuant to subsection D of this section, approve the request for payment or adjustment of payment from the OUSF based on a comparison of the total annual revenues received from the sources affected by the changes described in paragraph 1 of this subsection by the requesting eligible local exchange telecommunications service provider during the most recent twelve (12) months preceding the request, and the reasonable calculation of total annual revenues or cost increases which will be experienced after the changes are implemented by the requesting eligible local exchange telecommunications service provider.

Terral asserts that its request for OUSF funding is based on a decrease in federal USF revenues caused by the FCC's USF/ICC Transformation Order. Therefore, 17 O.S. § 139.106(K)(1)(a) is the relevant portion of the statute that would allow Terral recovery of OUSF funding if that assertion is found to be true and Terral meets the balance of the requirements of the statute and rules.

The general procedure to implement and obtain OUSF funding pursuant to the Act is set forth in 17 O.S. § 139.106(D), which is set forth below.

D. Within ninety (90) days after receipt of a request for funds from an eligible provider, the Administrator designated pursuant to Section 7 of this act shall review and determine the accuracy of the request and advise the provider requesting the funds of the determination of eligibility made by the Administrator. Any affected party shall have fifteen (15) days to request reconsideration by the Commission of the determination made by the Administrator. If the Commission does not issue an order within thirty (30) days from the request for reconsideration, the request shall be deemed approved, on an interim basis, subject to refund with interest. Any refund shall include interest at a rate of not more than the interest rate established by the Commission on customer deposits and shall accrue for a period not to exceed ninety (90) days from the date the funds were received by the requesting eligible provider.

Detailed provisions regarding the procedure to be utilized by the Commission regarding the implementation and continuing operation of the OUSF were not made within the statute. However, the statute granted the Commission the authority and required the Commission to "promulgate rules implementing the OUSF so that, consistent with the provisions of this section,

funds can be made available to eligible local exchange telecommunications service providers."¹⁴

Pursuant to that authority, the Commission promulgated its Chapter 59 rules, entitled "Oklahoma Universal Service and Lifeline."¹⁵ Within the Chapter 59 OUSF rules, detailed procedural rules that govern the process to request OUSF funding were codified at OAC 165:59-3-62 and entitled "Procedures for requesting funding from the OUSF."

Statutory Construction

When arguments arise as to whether or not a statute is being properly interpreted and applied by a regulatory agency, it is necessary to know the rules regarding how it should be read and applied. A brief outline of a portion of the cases within Oklahoma that guide us in that effort are shown below.

The basics of statutory construction were stated by the Oklahoma Supreme Court in *TRW/Reda Pump v. Brewington*, 1992 OK 31, at ¶5, 829 P.2d 15.

The primary goal of statutory construction is to ascertain and follow the intention of the Legislature. If a statute is plain and unambiguous and its meaning clear and no occasion exists for the application of rules of construction a statute will be accorded the meaning expressed by the language used. However, where a statute is ambiguous or its meaning uncertain it is to be given a reasonable construction, one that will avoid absurd consequences if this can be done without violating legislative intent. Further, the Legislature will not be presumed to have done a vain and useless act in the promulgation of a statute, nor will an inept or incorrect choice of words be applied or construed in a manner to defeat the real or obvious purpose of a legislative enactment. (emphasis added) (Citations omitted)

Further, it is clear that the statute being interpreted must be read in its entirety to properly ascertain legislative intent. "In the interpretation of statutes, courts do not limit their consideration to a single word or phrase in isolation to attempt to determine their meaning, but construe together the various provisions of relevant legislative enactments to ascertain and give

¹⁴ 17 O.S. § 139.106(A)

¹⁵ OAC 165:59

effect to the legislature's intention and will" *McNeill v. City of Tulsa*, 1998 OK 2, at ¶11, 953 P.2d 329 (emphasis added)

Also, the word "shall" is mandatory in nature. "Use of the term 'shall' by a lawmaking body is normally considered as a legislative mandate equivalent to the term 'must'". *Forest Oil Corp. v. Corp. Comm'n*, 1990 OK 58, at ¶26, 807 P.2d 774

Finally, great deference is given to the Commission in its interpretation of its own rules and the statutes it is called upon to administer. *Application of SWB Telephone Co., et al. v. State of Oklahoma ex rel. Oklahoma Corporation Commission, et al.*, 2007 OK 55, at ¶23, 164 P.3d 150. "Courts tend to accord great weight to an agency's construction of a statute when . . . a longstanding construction has been placed on the statute by an agency charged with its execution" *Schulte Oil Co., Inc. v. Oklahoma Tax Com'n*, 1994 OK 103, ¶4, 882 P.2d 65. (see also its footnote 6)

Analysis of 17 O.S. § 139.106(K) or the make-whole statute

It is my opinion that the make-whole statute upon which Terral's request for OUSF funding is based is not ambiguous. Its language is clear and legislative intent is easily determined by a plain reading of the statute. The statute clearly states that if any one or more of the three enumerated events occurs to a qualifying entity, a corresponding result occurs as is set forth in the statute.

First, if an FCC order, rule or policy causes a decrease in federal USF revenue to a qualifying entity, the statute provides that the entity "shall" recover the decreased revenue from the OUSF. (17 O.S. § 139.106(K)(1)(a)) This is the statutory provision upon which Terral relies in this case.

Second, if a qualifying entity experiences, as a result of changes in federal or state rules, orders, or policies or by federal or state law, a decrease in revenues or an increase in costs, the statute provides that the entity "shall" recover the revenue reductions or cost increases from the OUSF. (17 O.S. § 139.106(K)(1)(b))

Finally, if a qualifying entity experiences, as a result of changes in federal or state rules, orders, or policies or by federal or state law, a reduction in costs, the statute provides that the entity "shall" reduce the corresponding level of funding it receives from the OUSF. (17 O.S. § 139.106(K)(1)(c))

17 O.S. § 139.106(K)(2) clearly states that any of the above "shall not be conditioned upon any rate case or earnings investigation by the Commission."

When reviewing the OUSF statute in the context of Terral's application and the principles of statutory construction detailed above, it becomes clear that Terral qualifies for the funding requested as further explained below.

Terral is an entity eligible for OUSF funding

As was stated above, 17 O.S. § 139.106(B) provides that the OUSF is to provide funding to entities that meet the eligibility criteria established in this section. One of such stated criteria that a telecommunications service provider must meet in order to be eligible for OUSF funding is that the provider must be the ILEC which owned, maintained and provided facilities for universal service within a local exchange area on January 1, 1996 (or one of its successors). (17 O.S. § 139.106(M)) Within its review, PUD determined that Terral is the ILEC for Study Area 432029. (Recommendation, P. 3) This was not disputed by any party. Therefore, Terral satisfies the first hurdle to be eligible to receive OUSF funding for primary universal services.

Terral is eligible for OUSF funding pursuant to 17 O.S. § 139.106(K)

Terral has asserted throughout this cause that it is applying for OUSF funding pursuant to 17 O.S. § 139.106(K). As stated above, one of the requirements to qualify for funding under this section is that the ILEC must serve less than 75,000 access lines. Terral is an ILEC serving less than seventy-five thousand access lines. The evidence demonstrates that Terral served approximately 215 access lines at the time of its filing of its request for OUSF funding and continues to serve approximately 200 customers. No party disputed this. Therefore, Terral satisfies the first requirement necessary to qualify under the make-whole statute.

As is stated in 17 O.S. § 139.106(K)(1), if the eligible ILEC serves less than 75,000 access lines, it must experience one or more of three events that would cause it to qualify for OUSF funding. Terral has asserted that it has suffered a decrease in federal USF revenues as a result of the November 18, 2011, USF/ICC Transformation Order issued by the FCC. If true, this would qualify Terral for OUSF funding based on 17 O.S. § 139.106(K)(1)(a).

The evidence clearly shows that Terral's request for OUSF funding is specifically based on a decrease in federal universal service fund revenues caused by the FCC's USF/ICC Transformation Order released November 18, 2011. It further shows that the FCC's USF/ICC Transformation Order reduced federal USF funds payable to Terral.

Terral's witness testified that the Universal Service Administrative Company (USAC) calculates, on a monthly basis, Terral's lost federal USF revenues resulting from the FCC's adoption of the \$250 per line per month cap on total federal USF revenue in its USF/ICC Transformation Order and publishes monthly calculations of each company's lost federal USF revenue on USAC's website. Such calculations were submitted to the OUSF Administrator by Terral in support of its lost federal USF revenues associated with the High Cost Loop (HCL) and Interstate Common Line Support (ICLS) caused by the USF/ICC Transformation Order. It is

undisputed that the results from USAC's calculations demonstrate a loss of federal USF revenues by Terral resulting from the FCC order.

It is also undisputed that the results of the FCC's QRA calculations are available to the public on an annual basis and that the FCC's QRA calculations, including those applicable to Terral, and the link to entire FCC data file, were provided by Terral to the OUSF Administrator, Sprint and Verizon in this Cause. The evidence further shows that the results of the FCC's QRA calculations demonstrate and result in a loss of federal USF revenues by Terral resulting from the FCC order.

Therefore, Terral satisfies the requirement necessary to qualify under the make-whole statute upon which it relies.

Subsection G vs. Subsection K (of 17 O.S. § 139.106)

In addition to the above arguments that Sprint made asserting that every application for OUSF support must prove the need for the funding regardless of whether it is filed pursuant to Subsection G or Subsection K, Sprint also asserted that Terral applied for OUSF funding under Subsection G. Subsection G requires a proof of need, which will be discussed later in this ALJ Report. Additionally, Sprint argued that the Administrator made its recommendation relying on Subsection G, without making a determination of need, contrary to the statute. Therefore, Sprint argues, its recommendation should be overturned by the Commission.

Sprint made that assertion based on the argument that Terral's application states on its Attachment B, Form PUSF-1, that its request for funding is made under the following category: "Reasonable investments/expenses for primary Universal Service not recovered from Federal USF or other State or Federal Fund." Also, Sprint addresses the fact that the Administrator's recommendation cites two statutory provisions to justify its recommendation, wherein at p. 3 of

the Recommendation it recites the full text of both 17 O.S. § 139.106(G) and 17 O.S. § 139.106(K). Sprint then discusses the positions taken by Terral and PUD in Cause No. PUD 201200040 wherein both acknowledged that applications under Subsection G require evidence of need.

In essence, the gist of Sprint's argument is that when reviewing the application in this cause, together with the recommendation made by the Administrator, it is clear that the Terral filed under Subsection G and therefore should have made a proof of need, which it did not.

The instances referenced by Sprint in making its Subsection G argument were taken out of context. When reviewing the Application and the Amended Application as a whole, it is clear that Terral is relying upon a Subsection K, make-whole statute application. The Form PUSF - 1 that was attached to both of those documents was admittedly confusing as detailed by the Administrator in their Brief in Support, as follows:

There is much confusion over Form PUSF-1. Form PUSF-1 was created in 1997 and has gone through no substantive changes since that time. This form has been interpreted by PUD and the industry in the same manner since inception of the OUSF. Only recently has there been an alleged "problem" with this form, such allegations stemming from Sprint in conjunction with its public funds and constitutionality arguments regarding the OUSF statutes, in particular 17 O.S. § 139.106(K). However, there is no question Terral complied with OAC 165:59-3-62(1) and completed the requisite form according to the rule.

In the future, Form PUSF-1 may be revised to more simply reflect the underlying statutory language of 17 O.S. § 139.106. In its current version, Form PUSF-1 does not accurately reflect every carrier who might be filing for Primary Universal Services for every situation. (PUD's 10/4/13 Brief in Support of OUSF Administrator's Recommendation, Pgs. 14 - 15)

On both iterations of its Application, Terral had checked the blank at roman numeral "I" on the Form PUSF-1 attached thereto that stated "Reasonable investments/expenses for primary Universal Service not recovered from Federal USF or other State or Federal Fund" (which coincides with 17 O.S. § 139.106(G)). However, Terral also checked the blanks at letters "A" and "B" underneath the roman numeral section of the form entitled, respectively, "Decrease in

Revenue from Federal Universal Service Fund" and "Reduction in Revenue/Increase in Cost from Existing or Future Federal or State Regulatory Rules, Orders, or Policies or by Federal or State Law" (which coincide with 17 O.S. § 139.106(K)). The way the form PUSF-1 was filled out by Terral appears to be the only way to fill out the form as it currently exists when applying pursuant to Subsection K.

In addition, when fully reviewing the Application and Amended Application, it is easily seen that Terral is applying under Subsection K. This is evident when reading its "Explanation of Request" attached to the Application which details the FCC's USF/ICC Transformation Order and the resulting effects on Terral's revenues. Terral even attached to the Application a section providing excerpts entitled "Applicable Provisions from the FCC's USF/ICC Transformation Order and Code of Federal Regulations."

I cannot accept Sprint's argument that the mere checking of roman numeral "I" on the Form PUSF-1 form would cause Terral to be subject to the Subsection G proof of need requirement when all the other facts and evidence show that Terral was applying for funding pursuant to Subsection K.

In addition, although the Administrator did reference Subsection G in its recommendation, it did not rely upon the same in making its recommendation. This was also explained in its Brief in Support, as follows:

In this case, Terral filed an Application for funding from the OUSF. Since Terral is an ILEC and serves less than 75,000 access lines, it is eligible for OUSF funding under Subsection K(1)(a). Terral is also eligible for funding under Subsection G(1). The OUSF Administrator relied on the two subsections of the 17 O.S. § 139.106 in considering whether Terral should be reimbursed for the losses in federal high cost support. Then the OUSF Administrator determined that Terral is an eligible ILEC that serves less than 75,000 access lines, and therefore, Terral falls under Subsection K(1)(a). (PUD's 10/4/13 Brief in Support of OUSF Administrator's Recommendation, Pg. 14)

When reviewing the Recommendation of the Administrator and reading the entire document it becomes clear that the Administrator's recommendation is made pursuant to Subsection K.

The Amount of Funding

17 O.S. § 139.106(K)(2) provides in part: "The Commission shall, pursuant to subsection D of this section, approve the request for payment or adjustment of payment from the OUSF based on a comparison of the total annual revenues received from the sources affected by the changes described in paragraph 1 of this subsection by the requesting eligible local exchange telecommunications service provider during the most recent twelve (12) months preceding the request, and the reasonable calculation of total annual revenues or cost increases which will be experienced after the changes are implemented by the requesting eligible local exchange telecommunications service provider." Verizon and Sprint assert that Terral did not comply with this portion of the statute in making their request and that the entire request, therefore, should be denied.

In my view, to sort this issue out the first step is to undertake a thorough review of the statute to understand exactly what it means. Again, in doing my review, I believe that although this portion of the statute is convoluted and difficult to read, after analysis, the legislative intent of the statute is clear. In my experience, the easiest method of review for most statutes is to break the statute into phrases and understand each phrase in succession.

First, the initial portion of the statute merely directs the commission to approve payment to eligible applicants for OUSF support. It references subsection D (17 O.S. § 139.106(D)) which is the procedure set out by the legislature for processing OUSF applications. ("The Commission shall, pursuant to subsection D of this section, approve the request for payment or adjustment of payment from the OUSF . . . " In other words, the Commission is directed to

approve requests for qualifying entities pursuant to the procedural requirements set forth elsewhere.

The statute then continues on and states that the amount of payment is determined by way of a methodology to be set out later in the statute. (" . . . based on a comparison of . . . ")

The methodology given for determining the amount to be received by a qualifying entity is then detailed as a comparison of two amounts of revenue received by the entity. These being, in simplistic terms, (1) the amount of revenue received before the event that qualified the entity for OUSF support, compared to (2) the amount received by the entity after the event. (" . . . *the total annual revenues received from the sources affected by the changes described in paragraph 1 of this subsection by the requesting eligible local exchange telecommunications service provider during the most recent twelve (12) months preceding the request, and the reasonable calculation of total annual revenues or cost increases which will be experienced after the changes are implemented by the requesting eligible local exchange telecommunications service provider.*")

To further break this portion down, with regard to the above language shown in italics, I paraphrase this to mean the amount of Terral's most recent 12 months' revenue received from the federal universal service fund (since Terral is eligible pursuant to 17 O.S. § 139.106(K)(1)(a))¹⁶.

With regard to the above language shown in bold print, I paraphrase this to mean the estimate ("the reasonable calculation") of annual revenue that Terral will experience after the changes associated with the qualifying event occur.

These two portions of subsection K are not exactly consistent. The first requires a review of the amount of Terral's most recent 12 months' revenue received from the federal universal

¹⁶ Recall that the qualifying event that allows Terral funding is set forth in 17 O.S. § 139.106(K)(1)(a) as: "in the event of a Federal Communications Commission order, rule or policy, the effect of which is to decrease the federal universal service fund revenues of an eligible local exchange telecommunications service provider, the eligible local exchange telecommunications service provider shall recover the decreases in revenues from the OUSF,"

service fund. The second requires an estimate of the total annual revenues or cost increases which will be experienced after the changes are implemented. It is not limited to revenue or increases from the federal USF like the first portion. This is another example of how difficult this statute is to work with. However, practically speaking, in order to make the calculation workable, one should compare the revenue received before vs. after in an "apples to apples" manner.

Here, Terral asserted that after the FCC's USF/ICC Transformation Order became effective that it suffered reduced federal USF revenue. Therefore, what should have been done to calculate the amount of OUSF funding that Terral was entitled to pursuant to the make-whole statute, or specifically 17 O.S. § 139.106(K)(1)(a), would be to compare:

the total annual revenues received by Terral from the Federal USF during the most recent twelve months preceding the request ("Part 1 of the calculation")

with

Terral's estimated total annual revenues to be received (from the Federal USF) after the FCC's USF/ICC Transformation Order became effective.
("Part 2 of the calculation")

With that in mind, let us examine what did occur in the Administrator's determination of its recommendation as to the amount of funding Terral should receive. Before doing so, I should point out that Terral was the only party that put forth a witness in this case. The Administrator did not file testimony, or provide a witness at hearing, but participated by way of a legal brief and its Counsel's participation at the hearing. This made it difficult to ascertain the calculations that were made as well as what they relied upon in doing so. Up to this point, all other issues were able to be determined without witness participation by the Administrator. It would have been helpful to have a witness for the Administrator in dealing with this current issue, but after review of all the available information, the following became apparent.

With regard to the calculations made by Terral in their Application, as amended, wherein it estimated that it would be entitled to a lump-sum OUSF distribution of \$315,101.28 and a monthly recurring amount of \$26,258.44, the following was discovered.

In the prefiled testimony of Charles C. Curtis, the witness for Terral, he stated that "Terral provided the Administrator with the information required under subsection K of the OUSF Statute, a comparison of the total annual revenues received from the federal USF during the most recent twelve months preceding the request and prior to the implementation of the CAF Order and a reasonable calculation of the total annual revenues from the federal USF which would be experienced by Terral following implementation of the CAF Order. These calculations were available from public sources." (10/4/13, Testimony of Charles C. Curtis, P. 13, ln. 3-9) This is the portion of the statute shown above as Part 1 of the calculation.

However, on cross examination, he admitted that Terral had utilized "the latest 12 months that we used was the audited financials for the 2011 calendar year." (Transcript, 10/24/13 Hrg., P. 30, ln. 24-25) He further stated "(t)hat was the best 12-month period that we had at the time." (Transcript, 10/24/13 Hrg., P. 31, ln. 3-4) Further, that "(m)y understanding is when we fill out the PUSF-1 form, it's supposed to represent the latest 12-month period that we have, and show before and after those losses take effect to get - - quantify the amount that we're talking about." (Transcript, 10/24/13 Hrg., P. 72, ln. 6-10)

In response to a question as to whether the figures on the PUSF-1 form attached to the Application represented "only revenues from the Federal Universal Service Fund" (Transcript, 10/24/13 Hrg., P. 73, ln. 12-13), he then stated that "(n)o, that's 12 months of total regulated operating revenue. That would include intrastate, interstate, local, USF, Access, everything" (Transcript, 10/24/13 Hrg., P. 73, ln. 14-16)

This led to a follow-up question as to whether or not, since the initial figure included more than just revenues received from the Federal USF it was possible that part of the estimated reduction in revenue might then be comprised of something other than funds being lost through the federal cap, the witness replied "(n)o. The only reduction, the 315,101 difference was at that time they didn't have a lot of the -- the search engines and stuff that they have established today. Our best estimate of how much the losses in both the quantile regression analysis cap and the \$250 per line cap would be for a 12-month period, which would have been July 2012 to December 2012, and then January 2013 through June 2013. And that's what that 315,101 represents, and that's the difference between those two numbers that your're (sic) referencing." (Transcript, 10/24/13 Hrg., P. 74, ln. 5-14)

When further asked if it would make more sense and be more simple to look at the total amount of Federal USF monies received for the 12 months before as opposed to how much Terral was receiving after, the witness replied that "the reason why I did it the way I did it is to be simple. Is to take a look at the losses in the universal service revenue as a result of this order and subtract it from the last 12 months" (Transcript, 10/24/13 Hrg., P. 74, ln. 24, thru P. 75, ln. 3)

Next, when asked (aren't you) "including a lot of things in the revenue streams both before and after that have nothing to do with the Federal Universal Service?" the witness replied, "(n)ot on Line 3A under 'Lump sum' or 'Monthly recurring'. Those are exclusively losses from the USF from the order." (Transcript, 10/24/13 Hrg., P. 75, ln. 5-10)

Finally, in response to a line of questioning about whether those reductions in revenues from the Federal USF would increase each subsequent year (Terral receives less money each subsequent year from the Federal USF under the FCC order) and whether the initial Part 1 of the calculation figure would remain constant in each subsequent year, the witness replied that "(t)he

- - the number that represents the most recent 12 months when we filed it, that's not going to change." (Transcript, 10/24/13 Hrg., P. 79, ln. 9-10) And, "(t)he losses the we use in this filing come directly from USAC and the FCC, so they are accurate. They are the actual losses that are - - they calculate those losses and they - - and they are available." (Transcript, 10/24/13 Hrg., P. 79, ln. 17-21)

So, substantial evidence is in the record to support the conclusion that the calculations that Terral made, as verified by the Administrator, were those solely associated with a reduction in revenue as a result of the FCC's USF/ICC Transformation Order. Despite this, I believe sufficient doubt is present in the answers of the witness to cross examination as well as the lack of information as to this issue from the Administrator to warrant further inquiry.

Terral filed its application on August 6, 2012. The 12 months prior to that request would be August 1, 2011, through July 31, 2012. The 12 months utilized by Terral were Terral's audited financials for the 2011 calendar year because that was the best 12-month period that they had at the time as testified to by Terral's witness. In addition, Terral's witness admitted that the revenues used were not just those attributable to the Federal USF, but were the total regulated operating revenue of Terral for that time period, explaining further that since the figures for the losses utilized come directly from USAC and the FCC, once the calculation is made the ultimate result ends up being only associated with the Federal USF reduced revenue.

Both of those explanations sound good, but are not what the statute requires. I have repeatedly throughout this ALJ Report made reference to legislative intent and how it can be determined, in most instances, from a plain reading of the statute. Here is no exception. The legislature indicated that the initial threshold figure to be used to determine the amount of OUSF support due a qualifying entity in an instance such as Terral is experiencing here is to be determined based upon a review of *the total annual revenues received by the entity from the*

Federal USF during the most recent twelve months preceding the request, as I paraphrased it above.

As shown above, neither of these requirements were adhered to by Terral in submitting its OUSF request. However, it is my opinion that this is not a fatal error as is asserted by the intervenors. This alone does not cause a requirement that the entire request should be denied. In fact, after poring over the Application, the Amended Application, the Recommendation of the Administrator, and the testimony of Terral's witness, I am not sure that strict compliance with this particular portion of the statute is even possible.

On April 26, 2013, Terral filed a document herein entitled Notice of Approval Date of Interim OUSF Funding Pursuant to 17 O.S. § 139.106(D). This section of the statute provides that if a Commission order does not issue within thirty days of a filed request for reconsideration, the OUSF request is deemed approved, on an interim basis, subject to refund as set forth in the statute. On March 11, 2013, Sprint and Verizon jointly filed their request for reconsideration. Thirty days from the filing of the request for reconsideration in this case expired on April 11, 2013. Terral therefore began receiving OUSF funding based on the Administrator's recommendation shortly after the filing of the document. As detailed above, some of the parties have stated that, if funding is warranted at all, the amount of funding that Terral is receiving could be incorrect.

Therefore, based on all of the above, it is my recommendation that the Commission require the Administrator to perform an audit/true-up to review the calculation of the amount of funding that Terral is to receive based on inputs consistent with the requirements of 17 O.S. § 139.106(K)(2). It may well be that after an audit/true-up is done, that the ultimate result may be the same as that calculated from the inputs of information provided by Terral as described by its witness. The answers may be the same, but since this issue was not raised until hearing, and

since the Administrator did not file testimony, we do not know. This may be one of those "distinctions without a difference." However, I do not know that and recommend that, at least for this case, a review be undertaken to verify that the amounts granted Terral for OUSF support as a result of the FCC's USF/ICC Transformation Order pursuant to 17 O.S. § 139.106(K) are accurate.

Alternative Funding

Sprint and Verizon assert that Terral's application did not comply with, and the OUSF Administrator did not enforce, OAC 165:59-3-62(b). This rule requires each applicant for OUSF funding for primary universal service to apply for alternative funding designated to support universal service or explain why alternative funding is not available. The text of this rule is set forth below.

(b) It is the intention of the Commission that each funding request will be reviewed on a case-by-case basis. Part 9 of Subchapter 3 does not purport to predetermine the merits of any funding request. The eligible local exchange telecommunications service provider requesting OUSF funding for primary universal service shall make every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service, and shall submit all documentation of the effort to obtain funding from alternative funding sources designated to support universal service as a part of its Request for OUSF funding set forth in subsection (a), or an explanation for why alternative funding is not available. Upon the company providing the documentation that it has sought alternative funding sources, or an explanation for why alternative funding is not available, the company shall not be precluded from having its application processed. (OAC 165:59-3-62(b)) (emphasis added)

Although the OUSF statute does not require a requesting entity to seek alternative funding, the above Commission rule does. However, nothing in the Commission's rules require an entity requesting OUSF funds to pursue any specific source of alternative funding or that the alternative funding source match the basis of the request for OUSF funds. Indeed, the only

limitation on alternative funding sources contained in the rule is the limitation that the alternative funding sources sought are designated to support universal service.

It is my opinion that Terral fully complied with OAC 165:59-3-62(b). It did so by seeking a waiver of FCC rules and regulations that are designated to support universal service. I believe that Terral's request for a waiver filed with the FCC seeking permission to lift the FCC freeze on Terral's category allocators complies with the rule. The undisputed evidence in this cause demonstrates that lifting the freeze would allow Terral to recover additional costs from interstate special access services, which have historically been designated to support universal service.

Terral's witness explained how it had initially intended to file with the FCC for limited relief requesting a waiver from the effects of the USF/ICC Transformation Order, but it had decided against this action since that option would almost certainly be unsuccessful. Terral's witness testified that Terral came to this conclusion because the FCC had dismissed similar filings for limited waivers that had been filed by other rural ILECs located in states where recovery of lost revenue from the USF/ICC Transformation Order could be obtained through state funding mechanisms like the OUSF.

Terral assumed that their results would be the same. They made the presumption that their request for a waiver by the FCC from the USF/ICC Transformation Order would also be dismissed if they went forward with its filing since Oklahoma is a state that has a state funding mechanism, the OUSF.

That is why, as an alternative, Terral decided to file a petition with the FCC to lift the freeze of its separations factors. Terral's witness stated that Terral thought a request to lift the freeze would be a more efficacious and permanent solution to recover revenue lost from the USF/ICC Transformation Order.

Finally, Terral's witness explained why a raise in its local rates was not a reasonable alternative funding method. He explained that Terral serves just over 200 subscribers in very rural areas of Jefferson County, Oklahoma. In order for Terral to recover its lost federal USF revenue from its subscribers, rates would have to be increased over \$125 per line per month. It is obvious that would not be a sustainable or reasonable rate increase.

He then addressed the rate comparison that the intervenors had discussed. That being the comparison of Terral's local exchange rate of \$14 per month with AT&T's metropolitan local rate of \$23 per month. He explained that Terral's ability to raise rates is constrained due to the low density of its subscribers, limits on pricing in the face of competition, and its obligations as Carrier of Last Resort.

He stated that if Terral was to raise its residential local exchange rates from its current \$14 to the \$23 figure suggested by intervenors, it would only raise approximately \$1,800 in additional monthly local service revenue (\$9 raise per month times 200 customers). Compared to the amount of lost federal USF revenue, the additional revenue raised from such a rate increase would cover only approximately 5% of the loss. However, he pointed out that even if it did raise rates, Terral may not realize even the \$1,800 per month, since they would expect to lose customers as a result of that large of a rate increase.

Further, he explained that Terral is a Carrier of Last Resort. It is required to serve any customer within its serving area. If a competitive carrier were to go out of business or discontinue service from Terral's area, Terral would be legally required to offer service to all of those customers who were previously served by that carrier. This obligation requires Terral to incur costs to serve every customer in its rate base, unlike any other provider. This places Terral at a disadvantage over any competitive provider in terms of pricing and service obligation.

OAC 165:59-3-62(b) calls for a case by case analysis of OUSF funding requests. Terral has provided substantial evidence as to why a rate increase is not a reasonable alternative funding source applying the facts of this case. I am persuaded by the reasoning Terral has offered with regard to this issue as to this case.

OAC 165:59-3-62(b) does not require an entity requesting OUSF funds to fully exhaust all potential remedies associated with efforts to seek alternative funds as a prerequisite to requesting OUSF funding. To the contrary, the rule specifically states that once an applicant provides documentation that it has sought alternative funding, or an explanation for why alternative funding is not available, the applicant's application cannot be precluded from being processed.

Even though (1) the FCC has yet to act on Terral's FCC waiver petition, (2) Terral did not file for the limited waiver with the FCC requesting a waiver from the effects of the USF/ICC Transformation Order that it had initially planned to do; and, (3) Terral did not raise any additional revenue by increasing rates, it is my opinion that Terral made all reasonable and timely efforts, or, explained why the alternative funding was not available which is what is required by Commission's rules.

Therefore, based on all of the above it is my opinion, and I recommend that the Commission find, that Terral has made every reasonable and timely effort to obtain funding from alternative funding sources designated to support universal service available to it, that it has submitted documentation of the efforts it made to obtain that funding from the alternative funding sources designated to support universal service, and that it has provided its explanation for why the alternative funding is not available, thus complying with the Commission's rule requiring the same, OAC 165:59-3-62(b).

As was pointed out by the Administrator's counsel, it should be noted that in the event Terral's waiver is later granted by the FCC, the OUSF would be credited that amount out of Terral's future fund recoveries since no double recovery is allowed by Commission rule.¹⁷

Broadband Services and 17 O.S. § 139.108(B)

Sprint argued that Terral's request for OUSF funding includes amounts to be used for broadband services, which violates 17 O.S. § 139.108. That portion of the statute provides that "(n)o provider of Internet service or any company providing telecommunications services or its affiliate or subsidiary, may price such Internet service in an anticompetitive, discriminatory, or predatory manner or subsidize the price of Internet service with revenues received from other services (17 O.S. § 139.108(B)) (emphasis added) Sprint asserts that because of some language in Terral's petition before the FCC to unfreeze Part 36 Category Relationships¹⁸ that it recovers a portion of its broadband facilities through HCL and ICLS. Sprint therefore also asserts, that the fact that the current application seeks OUSF recovery for reductions in federal universal service support in those two categories, it is impossible to conclude that Terral's OUSF application does not seek recovery of revenue that is used for broadband.

Terral specifically addressed this issue through its witness, Charles C. Curtis, who testified in prefiled testimony that there were no broadband costs reported in the USF for either HCL or ICLS. (10/4/13, Testimony of Charles C. Curtis, P. 13, ln. 10-16) He explained that this means that there are no lost federal USF revenues associated with broadband being requested in

¹⁷ "(c) If an eligible local exchange telecommunications service provider receives funding from alternative funding sources for an investment or expense already reimbursed by the OUSF, the company shall reduce the amount of any prospective funding request from the OUSF by an equivalent amount. Under no circumstances will double recovery be allowed." (OAC 165:59-3-62(c))

¹⁸ ". . . Terral represented to the FCC in its pending petition to unfreeze Part 36 Category Relationships that it recovers broadband costs through federal USF High Cost Loop support and ICLS support, stating at p.3 of its petition: 'Without the waiver to unfreeze its categories, roughly [redacted] of the new broadband facilities will remain recovered through USF High Cost Loop and ICLS and end user common line charges, rather than through interstate special access. (Sprint, et al. 10-15-13 Rebuttal Brief, P. 31)

this cause. He further explained that identification of broadband costs is determined by FCC rules, particularly 47 CFR Part 36 and Part 69 rules.

Mr. Curtis testified that high capacity special access service costs are located in a separate category not associated with either the intrastate jurisdiction or USF funding. He further explained that for DSL offered over the same loop as tariffed voice service, the FCC only permits the assignment of DSL electronic costs to the interstate special access jurisdiction. Also, he explained that these rules require no special treatment of the local loop costs that is to be used in allocating DSL broadband since no additional costs are required to offer DSL over the same copper or fiber loop as voice services. In other words, he concluded FCC rules prohibit assigning any DSL or other broadband costs for USF cost recovery and no such broadband costs are included in either USF funds received or associated lost federal USF revenues requested in this case. (10/4/13, Testimony of Charles C. Curtis, P. 13, ln. 14-26)

Substantial evidence was presented in this cause that demonstrates that broadband costs are not part of the lost federal USF revenues Terral seeks to recover from the OUSF with this request for OUSF funding. I therefore recommend that the Commission find that Terral's request does not violate 17 O.S. § 139.108(B).

State/Public Fund and Proof of Need

(State/Public Fund) In a nutshell, Sprint argues that every application for OUSF support for primary universal services must be supported by evidence demonstrating that the requested funds are necessary to provide primary universal service, or in other words, what most parties term "proof of need." Sprint's position is that regardless of whether or not a party seeks funding

by way of an application proceeding under 17 O.S. § 139.106(G),¹⁹ or under 17 O.S. § 139.106(K),²⁰ the make-whole statute, need for the funding must be proven.

With regard to the make-whole statute, Sprint argued that the Commission is required to interpret 17 O.S. § 139.106(K) in a manner that renders it constitutional. And, because the OUSF is a state fund, comprised of state monies, funds cannot be given to a private entity without proof that the entity is entitled only to the amount of funding needed to accomplish the stated public purpose of the fund, and without safeguards to ensure that the money is used for the stated purpose. Thus, 17 O.S. § 139.106(K) must be interpreted to require evidentiary proof that Terral needs the requested funding in order to provide primary universal service at rates that are reasonable and affordable.

I do not agree with this premise.

Sprint first starts off its proposition with a discussion about how the Commission must adopt an interpretation of the make-whole statute to render it constitutional. They cite case law supporting the position that if two interpretations of a statute are possible, and only one of those interpretations would render the statute constitutional, a court is bound to apply the interpretation that will render the statute constitutional.²¹ That stated premise is what the cited cases stand for, but each of those were cases wherein a party was asking the Oklahoma Supreme Court to take original jurisdiction of a case for the specific purpose to review a statute and determine its constitutionality. Obviously that Court has the authority to do that, and the outcome of those cases makes sense.

¹⁹ I have termed 17 O.S. § 139.106(G) as being alternative one for obtaining OUSF support and as being general in nature and applicable to any eligible local exchange telecommunications service provider.

²⁰ I have termed 17 O.S. § 139.106(K), the make-whole statute, as the second alternative for obtaining OUSF support to be specific in nature, and available only to ILECs serving less than 75,000 access lines.

²¹ *Edmondson v. Pearce*, 2004 OK 23 at ¶17, 91 P.3d 605, the Court quoted *Fent v. Oklahoma Capitol Improvement Authority*, 1999 OK 64, ¶J 3-4, 984 P.2d 200, 204, cert denied, 528 U.S. 1021 (1999)

However, here, we have an administrative agency, the Commission, attempting to administer a state statute. As stated and supported by Terral and by the Administrator in their briefs and arguments, the Commission does not have the authority to determine the constitutionality of a statute and must therefore assume the constitutionality of the statute and administer it according to its interpretation of the statute's legislative intent.

The above discussion was a prelude or threshold argument to lead into the question as to whether or not the OUSF is a public fund. Prior to this time the Administrator has processed OUSF cases pursuant to its interpretation of the statute, being that the OUSF was not a public fund. However, the Commission has not as of this point in time made a finding in a Commission order expressly answering the question of whether or not the OUSF is a public fund. Likewise, other than in *Oklahoma Corporation Commission v. Fent*²² (discussed below) no Oklahoma court of competent jurisdiction has ruled on the issue specifically as to the OUSF.

We can easily assume the Commission's take on this issue in that it has previously approved numerous OUSF distributions based on the Staff's processing of OUSF applications consistent with its interpretation of this statute. This assumption is further evidenced by our review of the position taken by the Commission in *Fent*, that being that the OUSF is not a public fund. However, as stated above, the Commission has not made a specific definite finding on the issue in a Commission order to date.

In presenting its argument that the OUSF is a public fund, containing public money, Sprint states that " . . . this Commission has long recognized in its own rules that the OUSF is a **state fund**. OAC 165:59-3-10, which was last amended in 1999, specifically states the (sic) 'the OUSF is a state fund' (Sprint 9/6/12 Brief in Support of Request for Reconsideration, P. 17) (emphasis in original) Sprint hangs its hat on this inartfully worded rule but does not

²² District Court of Oklahoma County, OK, case No. CJ-2011-7632

consider additional rules within Chapter 59 which would allow one not to be swayed by this one use of the phrase "state fund".

First, OAC 165:59-1-3(a) entitled "Application of rules" provides that "(t)his Chapter shall be read in context with any applicable: . . . (2) State law and/or regulation" Second, OAC 165:59-1-7 entitled "Supremacy" states that "(i)f there is any conflict between this Chapter and the Oklahoma Telecommunications Act of 1997, the provisions of said Act shall supersede this Chapter to the extent of any conflict." As is pointed out by others in this case, a provision of the Oklahoma Telecommunications Act of 1997, 17 O.S. § 139.107(D), is specific in its pronouncement that the monies within the OUSF are not state monies.²³

With regard to the *Fent* case referenced above, the following excerpt should be noted from Sprint's brief:

In the *Fent* case, the district court issued a Final Order and Journal Entry of Judgment ("Final Order") on August 21, 2012, addressing several issues, including the issue of "whether the money paid to Solix from the OUSF/OLF under the Solix contracts are funded by state monies, state taxes or state revenues." (Final Order at 2). The district court found "[t]he OUSF/OLF are not funded by state revenue, state monies or taxes." (*Id.*) (Sprint 9/6/12 Brief in Support of Request for Reconsideration, P. 17)

Granted, this is a district court finding rather than a precedential ruling by the Supreme Court of Oklahoma. Therefore it is just persuasive. However, the District Court of Oklahoma County is a court of competent jurisdiction that has the authority to review a statute and make such a determination. It has looked at the *actual* OUSF statute and the facts associated with the

²³ "The monies deposited in the Oklahoma Lifeline Fund, the Oklahoma Universal Service Fund and the Oklahoma High Cost Fund shall at no time become monies of the state and shall not become part of the general budget of the Corporation Commission or any other state agency. Except as otherwise authorized by this act, no monies from the Oklahoma Lifeline Fund, the Oklahoma Universal Service Fund, or the Oklahoma High Cost Fund shall be transferred for any purpose to any other state agency or any account of the Corporation Commission or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense. Payments from the Oklahoma Lifeline Fund, the Oklahoma Universal Service Fund, and the Oklahoma High Cost Fund shall not become or be construed to be an obligation of this state. No claims for reimbursement from the Oklahoma Lifeline Fund, the Oklahoma Universal Service Fund or the Oklahoma High Cost Fund shall be paid with state monies." (17 O.S. § 139.107(D))

public fund issue as to that statute, and has made its determination that the OUSF is not a public money fund.

The case that Sprint relies upon to support its argument to the contrary, *State ex rel. Wright v. Oklahoma Corp. Comm.*,²⁴ is a case examining another fund also administered by the Commission, the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund. The ultimate holding in the *Wright* case was that "the money in the Indemnity Fund belongs to the State of Oklahoma."²⁵ The statute creating that fund contains very similar language to that of the OUSF regarding whether or not the funds are public funds. However, that is an entirely different fund, with different players and a different purpose. I am comfortable in relying upon a persuasive court finding that the OUSF does not contain public money when the actual statute and applicable facts were reviewed, as opposed to relying upon a finding from a court that reviewed a statute that is similar to it, regardless of how closely the statutory language between the two funds matches.

So, based upon all of the above, it is my opinion that:

- (1) since the relied upon rule is to be read in context with State law;
- (2) since 17 O.S. § 139.107(D) is supreme to OAC 165:59-3-10 and since 17 O.S. § 139.107(D) specifically states the funds within the OUSF are not monies of the state;
- (3) since a court of competent jurisdiction has reviewed the OUSF statute and the specific facts associated with the OUSF; and,
- (4) since the above statutory provision is clear, unambiguous and legislative intent is easily determined by a plain reading, that the OUSF is not a public fund as argued by Sprint and I recommend that the Commission so find.

²⁴ *State ex rel. Wright v. Oklahoma Corp. Comm.*, 2007 OK 73, 170 P.3d 1024 and *State ex rel. Oklahoma Corporation Commission v. McPherson*, 2010 OK 31, 232 P.3d 458

²⁵ *Wright*, at ¶ 28.

(Proof of Need) Ultimately, all of the above leads us to Sprint's argument that because the OUSF is a state fund and comprised of state monies (as it asserts), funds cannot be given to a private entity without proof that the entity is entitled only to that amount of funding needed to accomplish the stated public purpose of the fund, and without safeguards to ensure that the money is used for the stated purpose. Thus, Sprint argues that 17 O.S. § 139.106(K) must be interpreted to require evidentiary proof that Terral needs the requested funding in order to provide primary universal services at rates that are reasonable and affordable, and, that because there is no evidence in the Administrator's Recommendation that Terral presented any evidence to demonstrate that it needs the requested funds for this purpose, the Administrator's Recommendation should be rejected and the application should be denied. (Sprint 9/6/12 Brief in Support of Request for Reconsideration, Pgs. 15 - 16)

As I stated above, it is my opinion that the OUSF is not composed of public funds. Only if you accept Sprint's argument to the contrary is there any need to explore further what Terral's counsel termed at oral argument to be Sprint's "public funds rabbit trail."²⁶ I do not believe I would go that far as Sprint has made a very detailed and well thought out legal argument to support their position. I just do not agree with it.

It is fair to say however, that the argument is a bit convoluted. Several steps must be taken in order to get to acceptance of the requirement of proof of need in order to obtain funding pursuant to the make-whole statute. If you finally do get to where you agree that there is a proof of need, you ultimately arrive at a point where you must again ignore an expressed clear legislative intent set forth specifically within the statute. 17 O.S. § 139.106(K)(2) states:

The receipt of OUSF funds for any of the changes referred to in this subsection shall not be conditioned upon any rate case or earnings investigation by the Commission. The Commission shall, pursuant to subsection D of this section, approve the request for payment or adjustment of payment from the OUSF based

²⁶ Transcript, 10/24/13 Hrg., P. 126, ln. 1 - 5

on a comparison of the total annual revenues received from the sources affected by the changes described in paragraph 1 of this subsection by the requesting eligible local exchange telecommunications service provider during the most recent twelve (12) months preceding the request, and the reasonable calculation of total annual revenues or cost increases which will be experienced after the changes are implemented by the requesting eligible local exchange telecommunications service provider. (emphasis added)

The statute is clear. It provides there shall be no rate review or earnings investigation, or in other words proof of need, in order to receive OUSF funds pursuant to 17 O.S. § 139.106(K). The only requirement to satisfy is a comparison of the revenues received by the entity prior to, vs. after, the effective event triggering the statute (as discussed previously in this ALJ Report).

Therefore, it is my opinion, and I recommend that the Commission find, that when an OUSF recipient becomes eligible for funding pursuant to 17 O.S. § 139.106(K), or the make-whole statute, that the clear language of the statute be followed in that such funding eligibility shall not be conditioned upon any rate case or earnings investigation by the Commission, or proof of need.

Conclusion

Therefore, based upon all of the above, I recommend that the Commission adopt the following Findings of Fact and Conclusions of Law and accept the Recommendation that follows.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. THE COMMISSION FINDS that it has jurisdiction in this cause pursuant to Article IX, Section 18 of the Oklahoma Constitution and 17 O.S. §§ 139.106, 139.107 and 139.108.
2. THE COMMISSION FURTHER FINDS that notice was proper in the cause and in accordance with Commission rules and Oklahoma law.

3. THE COMMISSION FURTHER FINDS that Terral filed its request for OUSF funding based on 17 O.S. § 139.106(K).

4. THE COMMISSION FURTHER FINDS that Terral is an ILEC by virtue of the Commission's grant of a certificate of convenience and necessity authorizing it to provide local exchange telecommunications service within its certified service area prior to 1996. Therefore, Terral is eligible to receive OUSF funding by virtue of 17 O.S. § 139.106(M).

5. THE COMMISSION FURTHER FINDS that Terral is an ILEC serving less than 75,000 access lines.

6. THE COMMISSION FURTHER FINDS that on November 18, 2011, the FCC released and published its USF/ICC Transformation Order.

7. THE COMMISSION FURTHER FINDS that the FCC's USF/ICC Transformation Order reduced federal USF funds payable to Terral.

8. THE COMMISSION FURTHER FINDS that Terral is entitled to receive OUSF funding under 17 O.S. § 139.106(K)(1)(a).

9. THE COMMISSION FURTHER FINDS that Terral has made every reasonable and timely effort available to it in order to obtain funding from alternative funding sources designated to support universal service, and has submitted documentation of its efforts to obtain such alternate funding as a part of its application for OUSF support; and, that Terral has adequately explained why certain alternative funding was not available to it. Therefore, Terral is in compliance with Commission rule OAC 165:59-3-62(b).

10. THE COMMISSION FURTHER FINDS that broadband costs are not part of the lost federal USF revenues Terral seeks to recover from the OUSF with this request. Therefore, Terral's request does not violate 17 O.S. § 139.108(B).

11. THE COMMISSION FURTHER FINDS that Terral did not provide through the application process the same information required by 17 O.S. § 139.106(K)(2) to determine the amount it was due in OUSF funding. Therefore, the Commission further finds that the Administrator should perform an audit/true-up to review the calculation of the amount of funding that Terral is to receive based on inputs consistent with the requirements of 17 O.S. § 139.106(K)(2).

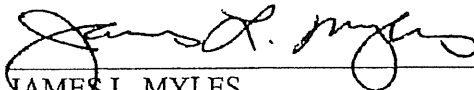
12. THE COMMISSION FURTHER FINDS that the OUSF is not a public fund, and is not funded by or composed of state revenue, state monies or taxes.

13. THE COMMISSION FURTHER FINDS that OUSF funding eligibility pursuant to 17 O.S. § 139.106(K), or the make-whole statute, shall not be conditioned upon any rate case or earnings investigation by the Commission, or proof of need, in accordance with the provisions of that statute.

VII. RECOMMENDATION

The ALJ recommends the Commission determine that Terral Telephone Company is eligible to receive funding for primary universal services representing lost Federal USF support pursuant to 17 O.S. § 139.106(K)(1)(a), covering the period beginning July 1, 2012, forward. In addition, I recommend that the Commission require the Administrator of the OUSF perform an audit/true-up to review the calculation of the amount of funding that Terral is to receive based on inputs consistent with the requirements of 17 O.S. § 139.106(K)(2).

Respectfully submitted this 24th day of April, 2014.


JAMES L. MYLES
Administrative Law Judge

ATTACHMENT 3

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION)	CAUSE NO. PUD 201200183
OF TERRAL TELEPHONE COMPANY FOR)	
FUNDING FROM THE OKLAHOMA)	ORDER NO. 666320
UNIVERSAL SERVICE FUND)	
)	
)	

ORDER ADVANCING CAUSE TO COMMISSION *EN BANC*

The Corporation Commission of Oklahoma ("Commission") being regularly in session and the undersigned Commissioners being present and participating, there comes on for consideration and action Terral Telephone Company's ("Terral") Motion to Reopen the Record and Remand the Cause for Further Hearing ("Motion").

On June 16, 2017, Terral filed its Motion. The Motion seeks the record be reopened and remanded to an Administrative Law Judge to allow the parties to present additional evidence to address questions, including but not limited to, "whether Terral's rates to provide primary universal services are reasonable and affordable and whether the OUSF funding requested is necessary to enable Terral to provide primary universal services at rates that are reasonable and affordable." Motion at 2.

On June 26, 2017, Sprint Communications Company, L.P., Sprint Spectrum L.P., Virgin Mobile USA filed their Objection to Terral's Motion. Also on this date, the Verizon Companies filed its Response to Terral's Motion asserting its position that the Commission should deny Terral's Motion.

On June 29, 2017, the Commission *en banc* heard Terral's Motion. At the hearing, counsel for the Public Utility Division announced its position that Terral should be afforded the opportunity to supplement the record to satisfy requirements set forth in the Commission's most recent orders. After hearing arguments by counsel to the Motion, the Commission took the matter under advisement.

Upon further consideration and pursuant to OAC 165:5-13-2(b), the Commission hereby advances this Cause to the Commission *en banc* for the sole purpose of supplementing the record (“Supplemental Hearing”). The Commission finds there is good cause in this instance to waive OAC 165:5-13-3(n). Specifically, the Commission recognizes during the pendency of this Cause, recent Commission orders have issued addressing similar issues as the Cause herein and believes additional evidence related to its position will aid the Commission.

In issuing this Order, the Commission emphasizes that it intends to limit supplementation of the record to evidence pertaining to the Application, as amended, filed in this Cause and is not granting or otherwise authorizing any further amended applications by Terral or supplemental determinations by the OUSF Administrator. The additional evidence deemed relevant to the Commission to aid it in making its decision in this Cause will be addressed by the Commission at the Supplemental Hearing, or as otherwise directed by the Commission.

Further, additional evidence will be limited to the purpose of addressing whether the OUSF funding request allows Terral to promote and ensure the availability of *primary* universal services, at rates that are *reasonable* and *affordable*, and to provide for reasonably comparable services at affordable rates in rural areas as in urban areas, pursuant to 17 O.S. (1997) § 139.106(B). In addressing these issues, the parties may include, but are not limited to, the following supplemental information to demonstrate:

- a) Compliance or non-compliance by Terral with Parts 32, 36, and 64 of the FCC separations requirements;
- b) Compliance or non-compliance by Terral with alternative funding requirements, pursuant to OAC 165:59-3-62;
- c) Compliance or non-compliance by Terral with OAC 165:55-17-27(e);
- d) Compliance or non-compliance by Terral of 17 O.S. (1997) § 139.106(K)(2); and

- e) Impact of the FCC's *USF/ICC Transformation Order*, FCC 11-161 (Nov. 18, 2011), and any subsequent clarification orders and/or orders on reconsideration.

Therefore, Supplemental Testimony may be filed by Applicant on or before Friday, August 18, 2017, and Responsive Testimony and/or Statements of Position may be filed by parties on or before Friday, September 8, 2017. To the extent parties deem it necessary to issue data requests, data requests should be limited to the Applicant's Supplemental Testimony. Any and all data requests pertaining to the Supplemental Testimony shall be issued by Thursday, August 24, 2017, and answered by Friday, September 1, 2017. Further, Rebuttal Testimony may be filed on or before Friday, September 22, 2017. The Commission encourages parties to timely and cooperatively work together to ensure the availability and receipt of information.

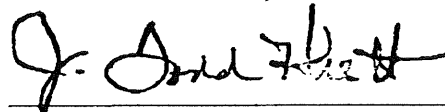
Further, the Commission will conduct a supplemental Hearing on the Merits for the purpose(s) set forth above. Any prehearing motions and the Hearing on the Merits shall take place on **Wednesday, September 27, 2017, at 9:30 a.m. in Room 301**, Jim Thorpe Office Building, 2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, and continue each day thereafter, until concluded by the Commission.

IT IS SO ORDERED.

OKLAHOMA CORPORATION COMMISSION

CONCUR

DANA L. MURPHY, Chairman



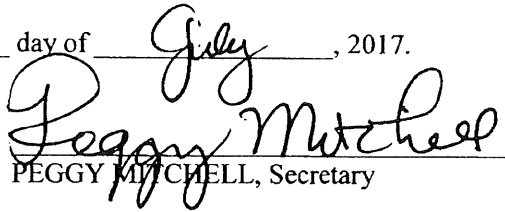
J. TODD HIETT, Vice Chairman



BOB ANTHONY, Commissioner

DONE AND PERFORMED this 27 day of July, 2017.

BY ORDER OF THE COMMISSION:


PEGGY MITCHELL, Secretary

ATTACHMENT 4

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF)
MEDICINE PARK TELEPHONE COMPANY)
FOR FUNDING FROM THE OKLAHOMA) CAUSE NO. PUD 201600458
UNIVERSAL SERVICE FUND FOR LOST)
FEDERAL ICLS SUPPORT)

664606

HEARING: March 21, 2017, in Courtroom B and Courtroom 301
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Mary Candler, Administrative Law Judge

APPEARANCES: Ron Comingdeer and Kendall W. Parrish, Attorneys *representing*
Medicine Park Telephone Company
Nancy M. Thompson, Attorney *representing* Sprint Communications
Company, L.P., Sprint Spectrum, L.P. and Virgin Mobile USA, L.P.
Jack G. Clark, Jr., Attorney *representing* MCImetro Access Transmission
Services Corp. d/b/a Verizon Access Transmission Services, MCI
Communications Services, Inc. d/b/a Verizon Business Services,
Verizon Long Distance, LLC, TTI National Inc., Verizon Select
Services, Inc. and Cellco Partnership and its commercial mobile
Radio service subsidiaries operating in the State of Oklahoma
Lauren Hensley, Assistant General Counsel *representing* Public Utility
Division, Oklahoma Corporation Commission

FINAL ORDER DENYING OUSF FUNDING

This cause comes before the Corporation Commission ("Commission") of the State of Oklahoma on the Application of Medicine Park Telephone Company ("Medicine Park") for funding from the Oklahoma Universal Service Fund ("OUSF") for lost Federal ICLS Support and the Requests for Reconsideration of the Determination of Administrator in this case filed by Sprint Communications Company, L.P., Sprint Spectrum, L.P. and Virgin Mobile USA, L.P. (collectively, "Sprint") and MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services; MCI Communications Services, Inc. d/b/a Verizon Business Services; Verizon Long Distance, LLC; Verizon Enterprise Solutions; TTI National, Inc.; Verizon Select Services, Inc.; and Cellco Partnership and its commercial mobile radio service subsidiaries operating in the State of Oklahoma (collectively, "Verizon").

I. PROCEDURAL HISTORY

1. On October 28, 2016, Medicine Park filed its Application requesting funding from the OUSF for lost Federal ICLS Support ("Application") as well as a Notice of Request for OUSF Reimbursement.

2. On January 24, 2017, the Notice of Determination ("Determination") by the OUSF Administrator ("Administrator" or "PUD") was filed.

3. On February 8, 2017, Sprint filed its Request for Reconsideration as well as a Notice of Request for Reconsideration and Notice of Prehearing Conference, setting the Prehearing Conference for February 9, 2017, at 1:30 p.m.

4. Also on February 8, 2017, Verizon filed its Request for Reconsideration along with a Notice of Request for Reconsideration and Notice of Prehearing Conference, setting the Prehearing Conference for February 9, 2017, at 1:30 p.m.

5. On February 9, 2017, the Prehearing Conference was held and a procedural schedule was recommended.

6. On February 10, 2017, the Prehearing Conference Form was filed.

7. On February 22, 2017, Sprint filed its Brief in Support of Request for Reconsideration.

8. On February 23, 2017, Verizon filed its Brief in Support of Request for Reconsideration.

9. On March 8, 2017, the PUD Staff filed its Response to Sprint's and Verizon's Briefs in Support of Request for Reconsideration.

10. Also on March 8, 2017, Medicine Park filed its Brief in Support of Administrator's Determination.

11. Also on March 8, 2017, the Redacted Prefiled Direct Testimony of John P. Harris was filed on behalf of Medicine Park.

12. On March 13, 2017, a Notice of Hearing was filed setting the hearing date for March 21, 2017.

13. On March 15, 2017, Sprint filed its Motion to Strike all Summaries of Amounts Requested in this Case and Exhibits Attached to the Prefiled Testimony of John P. Harris ("Motion to Strike"), along with a Notice of Hearing which set the Motion to Strike for hearing on March 21, 2017.

14. On March 17, 2017, all parties filed their respective Witness and/or Exhibit Lists.

15. On March 20, 2017, PUD filed its Response to Sprint's Motion to Strike.

16. On March 21, 2017, the Summary of Testimony of John P. Harris was filed.

17. Also on March 21, 2017, the hearing on the Motion to Strike and the Hearing on the Merits were heard and the Administrative Law Judge ("ALJ") took the matters under advisement.

18. On March 24, 2017, a Notice of Approval Date of Interim OUSF Funding was filed.

19. On March 27, 2017, the Proposed Findings of Fact and Conclusions of Law were filed by Medicine Park, PUD and Sprint.

20. Also on March 27, 2017, a Proposed Final Order was filed by Verizon.

21. Also on March 27, 2017, the Summary of Testimony of John P. Harris was filed.

22. On April 11, 2017, the ALJ filed her Report and Recommendation of the ALJ (“ALJ Report”).

23. On April 25, 2017, Sprint and Verizon each filed exceptions to the ALJ Report and motions for oral argument.

24. On May 2, 2017, Medicine Park and PUD each filed a response to the exceptions of Sprint and Verizon.

25. On May 10, 2017, the Commission granted the motions for and heard oral argument on the exceptions filed by Sprint and Verizon, and took the matter under advisement.

II. SUMMARY OF THE EVIDENCE

Documents filed in this Cause are contained in records kept by the Court Clerk of the Commission. Testimony from John P. Harris on behalf of Medicine Park was offered at the Hearing on the Merits. The entirety of the testimony offered is contained in the transcript of these proceedings. The testimony summary is included as Exhibit “A” attached hereto and incorporated herein.

III. MOTION TO STRIKE

Sprint filed a Motion to Strike on March 15, 2017, moving the Commission to strike all summaries of the amounts requested by Medicine Park and all summaries of the amounts recommended by the Administrator in the Notice of Determination.

In light of the decision on the merits of this Cause, the Motion to Strike is moot. However, the Commission encourages intervenors in the future to take advantage of the opportunity to review highly sensitive confidential information with the Administrator/PUD at the designated location(s) to better assist the record in OUSF reconsiderations.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this cause pursuant to Article IX, Section 18 of the Oklahoma Constitution and 17 O.S. §§139.101, *et seq.* Notice was given as required by law and the Rules of the Commission.

2. The Request for OUSF Funding in this matter is brought under 17 O.S. §139.106(K)(1)(a), which provides:

K.1. Each request for OUSF funding by an eligible ILEC serving less than seventy-five thousand access lines shall be premised upon the occurrence of one or more of the following:

a. in the event of a Federal Communications Commission order, rule or policy, the effect of which is to decrease the federal universal service fund revenues of an eligible local exchange telecommunications service provider, the eligible local exchange telecommunications service provider shall recover the decreases in revenues from the OUSF[.]

3. OUSF amounts paid under 17 O.S. §139.106(K) are for the purpose of maintaining rates for primary universal services that are **reasonable and affordable**, and to provide for **reasonably comparable services at affordable rates** in rural areas as in urban areas. *See* 17 O.S. §139.106(B). *See also Dobson Telephone Co. v. State*, 2017 OK CIV APP 16, mandate issued March 21, 2017. Medicine Park's Application further states it seeks reimbursement "to ensure the availability of Primary Universal Services at reasonable and affordable rates". Application at 1, ¶2.

4. Medicine Park's Application requests recovery of \$60,707.00 covering the period January 1, 2014, through December 31, 2014, and monthly payments of \$5,058.92 starting January 1, 2015, based upon its stated decrease in federal Interstate Common Line Support ("ICLS").

5. PUD reviewed Medicine Park's Application and issued its Determination on January 24, 2017, recommending approval of \$60,707.00 covering the period of January 1, 2014, through December 31, 2014, and monthly payments of \$5,058.92 starting January 1, 2015. Despite Medicine Park's Application noting that the monthly sum was to "be trued up once actual losses are determined by NECA each year" (Application at Narrative), the Determination recommended monthly payments in the requested amount beginning January 1, 2015—and it is unclear whether conditions are placed on such ongoing amount(s).

6. As set forth in the Determination, the Administrator's review process consisted of reviewing certain documentation pertaining to Medicine Park and conducting an onsite audit. *See* Determination at p. 2, § B (The Administrator's Review Process). Despite basing its Determination on review of the identified documents and information, no witness testified on behalf of PUD to substantiate its recommendation set forth in its Determination and no information upon which the Administrator based such recommendation was otherwise admitted

into evidence in the record in this Cause. Further, it appears only the redacted testimony of the sole witness, Mr. John P. Harris on behalf of Medicine Park, was filed in this Cause.

7. In the Findings and Conclusions of the Administrator (*see* Determination at 3, § III(A)), the Administrator finds that “[a]ccording to the Application in this Cause, the impact of the USF/ICC Transformation Order on Applicant’s ICLS revenues was a reduction” in the amount requested by Medicine Park. (emphasis added).

8. In a related Medicine Park cause seeking OUSF funding for primary services, Cause No. PUD 201500444, *In the Matter of the Application of Medicine Park Telephone Company for Funding from the Oklahoma Universal Service Fund*, the Commission addressed similar concerns with the record in primary causes and provided guidance for future primary universal service applications. *See* Order No. 656221. Specifically, the Commission found that “[i]n future primary universal service cases, the applicant must provide information to the Administrator regarding costs, expenses and revenues related only to primary universal service.” Order 656221 at 17, ¶ 4.

9. Medicine Park failed to prove, and the Administrator failed to determine, whether Medicine Park’s rates for primary universal services are reasonable and affordable pursuant to 17 O.S. §139.106(B).

10. There is no evidence in this Cause that the requested funding is necessary to enable Medicine Park to maintain rates for primary universal services that are reasonable and affordable.

11. The Commission is not persuaded that the OUSF statutes mandate a purely mathematical review process by the Commission of numbers submitted by applicants for funding or that the statutes do not allow the Commission to determine the reasonableness of the amount to be funded. As set forth in 17 O.S. §139.106(B), the right to receive funding is clearly conditional upon submission of a proper request for funding. The stated purpose of the OUSF is to promote and ensure primary universal services at rates that are **reasonable and affordable**, and to provide for **reasonably comparable** services at **affordable** rates in rural areas as in urban areas. *See* 17 O.S. §139.106(B). Further, a purely mathematical review of funding requests would not serve to promote the provision of primary universal service. Without the ability to ensure proper amounts are necessary to maintain rates for primary services, the purpose of the fund is defeated to the extent customers are required to fund amounts beyond that necessity and would result in waste.

ORDER

IT IS THEREFORE THE ORDER OF THE OKLAHOMA CORPORATION COMMISSION that the foregoing findings of fact and conclusions of law are adopted as the Order of the Commission.

THE COMMISSION FURTHER ORDERS that Medicine Park’s Application for OUSF funding is denied, for the reasons stated in the findings of fact and conclusions of law.

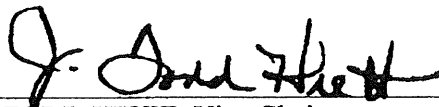
THE COMMISSION FURTHER ORDERS that Medicine Park shall immediately repay all interim funding received in this Cause, along with applicable interest as set forth in 17 O.S. § 139.106(D)(5).

THE COMMISSION FURTHER ORDERS that Sprint's Motion to Strike is denied as moot.

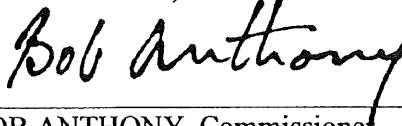
CORPORATION COMMISSION OF OKLAHOMA

Dissenting Statement Attached

DANA L. MURPHY, Chairman



J. TODD HIETT, Vice Chairman



BOB ANTHONY, Commissioner

CERTIFICATION

DONE AND PERFORMED by the Commissioners participating in the making of this Order as shown by their signatures above this 8th day of June, 2017.

Seal



~~PEGGY MITCHELL, Commission Secretary~~


JOYCE CONNER, Assistant Secretary

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION)	
OF MEDICINE PARK TELEPHONE COMPANY)	CAUSE NO. PUD 201600458
FOR FUNDING FROM THE OKLAHOMA)	
UNIVERSAL SERVICE FUND FOR LOST)	ORDER NO. _____
FEDERAL ICLS SUPPORT)	

DISSENTING STATEMENT OF CHAIRMAN DANA L. MURPHY

I respectfully dissent from the majority decision because I do not believe it comports with the Oklahoma Legislature's intent to, in part, provide support to small, rural carriers who have experienced decreases in federal funding as a result of Federal Communications Commission action and with the Legislative policy to preserve and advance universal services.


DANA L. MURPHY, Chairman

ATTACHMENT “A”

Summary of Testimony

John P. Harris

At the hearing on the merits in this matter, Medicine Park presented the testimony of Mr. John P. Harris, Managing Partner of Telcom Advisory Group.

Mr. John P. Harris, Managing Partner of Telcom Advisory Group, testified in support of Medicine Park Telephone Company, Inc.’s. (“Medicine Park”) request for recovery of a portion of its corporate operations expenses (PUD 201600458) from the Oklahoma Universal Service Fund (“OUSF”). The recovery of these expenses from the interstate Federal Universal Service Fund settlements has been reduced due to changes in federal rules adopted by FCC orders. Mr. Harris’ testimony supported the amounts requested and demonstrated that Medicine Park has fulfilled the prerequisite requirements for requesting OUSF.

Mr. Harris further testified that Oklahoma statutes allow for recovery from the OUSF when certain events occur that impact the revenues and/or costs of an eligible telecommunications carrier, such as Medicine Park. 17 O.S. § 139.106(K) states:

1. Each request for OUSF funding by an eligible ILEC serving less than seventy-five thousand access lines shall be premised upon the occurrence of one or more of the following:

a. in the event of a Federal Communications Commission order, rule or policy; the effect [sic] which is to decrease the federal universal service fund revenues of an eligible local exchange telecommunications service provider, the eligible telecommunications provider shall recover the decreases in revenues from the OUSF,

b. if, as a result of changes required by existing or future federal or state regulatory rules, orders, or policies or by federal or state law, an eligible local exchange telecommunications service provider experiences a reduction in revenues or increase in costs, it shall recover the revenue reductions or cost increases from the OUSF, the recovered amounts being the net reduction in revenues or cost increases, or

c. if, as a result of changes made as required by existing or future federal state regulatory rules, orders, or policies or by federal or state law, an eligible local exchange telecommunications provider experiences a reduction in costs, upon approval by the Commission, the provider shall reduce the level of OUSF funding it receives to a level sufficient to account for the reduction in costs.

Mr. Harris testified that Medicine Park requested reimbursement from the OUSF for the decrease in Federal Universal Service funding revenues due to changes in Federal rules adopted

by FCC orders. Specifically, Mr. Harris testified that Medicine Park experienced a decrease in Federal Universal Service revenue from the Interstate Common Line Support (“ICLS”) due to a cap on the amount of interstate recovery allowed for corporate operations expenses. Mr. Harris testified that the FCC’s Fourth Order on Reconsideration, in CC Docket No. 96-45, adopted limits to the amount of corporate operations expense that a carrier can include and recover from the High Cost Loop Support (“HCLS”) component of the Federal Universal Service Fund. The corporate operations expense cap was enacted by the FCC in Section 36.621(a)(4) of its rules. Mr. Harris testified that the limitation was initially applied only to HCLS, but was subsequently extended to Common Line as well in the FCC’s USF/ICC Transformation Order.

Mr. Harris further testified that the basis for the amounts shown in the Schedules to the Application is the Company’s most recently finalized cost study. Mr. Harris further testified that each year Medicine Park prepares a cost of service study based on Medicine Park’s accounting records prepared in accordance with Parts 32 (Uniform System of Accounts), 36 (Jurisdictional Separations), and 64 (Miscellaneous Rules Relating to Common Carriers) of the FCC Rules. These cost studies are primarily used for NECA settlements and cost submissions for universal service funding. Mr. Harris testified that Medicine Park’s accounting records are kept in accordance with Part 32 of the FCC rules and regulations, and are audited annually by an independent auditing firm. In addition, Mr. Harris testified that the cost studies, NECA settlements and cost submissions for universal service were prepared by Telcom Advisory Group. Mr. Harris further testified that Medicine Park has been subject to the various recurring reviews by its external auditors, NECA and the Rural Utilities Service (“RUS”). Mr. Harris further testified that the amounts requested are supported by the schedules in highly sensitive confidential Harris Exhibits 3 and 4.

Mr. Harris testified that Harris Exhibit 3 calculates the impact of the corporate operations expense limit on ICLS settlements received by Medicine Park. CFR 47 Part 54.1308 specifies two methods for calculating the corporate operation limitation with the greater result being used. The largest portion of this limit is the actual corporate expenses, the interstate impact of which is \$60,467. Mr. Harris further testified that there is a secondary impact limiting the amount of Cash Working Capital which is considered rate base for purposes of cost of service. Cash Working Capital is an allowance based upon operating expenses. Since operating expenses are being limited, Cash Working Capital is limited in turn. Mr. Harris testified that the impact of this is to reduce Interstate rate base by \$2,810, which reduces revenue requirement/settlements by \$239, and therefore, the total reduction in Federal Universal Service funding revenue experienced by Medicine Park is \$60,707. Mr. Harris further testified that this amount is confirmed on line 2 of Harris Exhibit 4, which is NECA’s ICLS submission on behalf of Medicine Park.

Mr. Harris further testified that in PUD 201000142, Pioneer Telephone Cooperative was granted recovery specifically related to the Federal limit on corporate operating expenses. Mr. Harris further testified that the Commission also approved recovery of impacts associated with the federal corporate operations expense cap limitation in the following Causes:

1. PUD 200000341 - KanOkla Telephone Company
2. PUD 990000410 - Oklahoma Communication Systems, Inc.

3. PUD 200000037 - Oklahoma Telephone and Telegraph Company
4. PUD 200000193 - Chickasaw Telephone Company

Mr. Harris further testified that the OUSF Administrator Staff (“Staff”) reviewed Medicine Park’s request and approved the Application for funding. Staff issued its initial recommendation approving Medicine Park’s Application on January 24, 2017. Mr. Harris further testified that it was not necessary for Staff to conduct an earnings review prior to approval of a request for OUSF funding. Mr. Harris testified that O.S. § 139.106(K)(2) states: “The receipt of OUSF funds for any of the changes referred to in this subsection shall not be conditioned upon any rate case or earnings investigation by the Commission.” Mr. Harris testified that the rules essentially require a comparison of revenues and/or costs before and after the change leading to the OUSF request. Mr. Harris testified that Medicine Park submitted with its Application sufficient information to evaluate the changes and Staff conducted an appropriate review of the information.

Mr. Harris further testified regarding the key components of the Corporate Operations Expenses that Medicine Park seeks to recover. Mr. Harris testified that for reduced ICLS, the primary components of Corporate Operations Expense consist of costs associated with the following: management and administration, planning, accounting and financial services, regulatory compliance and relations, personnel administration, legal, procurement, insurance, and retirement benefits. Mr. Harris testified that Medicine Park is seeking recovery of portions of these expenses from the OUSF, as defined in its Application. Prior to the change in Federal Rules, these expenses were recoverable from the ICLS.

Mr. Harris further testified that Medicine Park currently charges \$18.00 per month for residential local exchange service and fully intends to increase its monthly residential rate to \$20.00 on or before June 1, 2017, to comply with the FCC’s local rate floor.

Mr. Harris further testified that it is critical for Medicine Park to recover the decrease in Federal USF from the OUSF. Mr. Harris testified that Medicine Park has realized significant cost increases since the adoption of the FCC Order decreasing Federal USF revenues to Medicine Park. These costs are incurred primarily to sustain service levels in accordance with its universal service obligations. Mr. Harris testified that the company does provide broadband access on a wholesale basis. He further testified that all regulated costs of broadband service are allocated to Interstate in accordance with Part 36. Any non-regulated costs related to broadband are incurred by an affiliate as the retail provider of broadband services. Mr. Harris further testified that it is critical for Medicine Park to recover its costs so that it can “maintain rates for primary universal services, at rates that are reasonable and affordable, and to provide for reasonably comparable services at affordable rates in rural areas as in urban areas.” (Section 165:59, Subchapter 3 Part 9 of the Oklahoma Corporation Commission.) Recovery of these costs is consistent with the established purpose of the OUSF.

ATTACHMENT 5

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

**IN THE MATTER OF THE APPLICATION
OF TERRAL TELEPHONE COMPANY FOR
FUNDING FROM THE OKLAHOMA
UNIVERSAL SERVICE FUND**

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CAUSE NO. PUD 201200183

FILED
AUG 02 2017

**COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA**

Request by Commissioner Bob Anthony to the OUSF Administrator

Please provide the following for Cause No. PUD 201200183:

1. Applicant Annual Reports submitted to the Corporation Commission since 2011.
2. For calendar years since 2011, payments to Applicant from the OUSF, subtotaled by year.
3. For calendar years since 2011, payments to Applicant from Federal support, subtotaled by year.
4. For calendar years since 2011, payments to Applicant from the Oklahoma High Cost Fund (HCF),
subtotaled by year.

August 2, 2017

BEFORE THE CORPORATION COMMISSION OF OKLAHOMA

IN THE MATTER OF THE APPLICATION)
OF TERRAL TELEPHONE COMPANY FOR)
FUNDING FROM THE OKLAHOMA)
UNIVERSAL SERVICE FUND)

CAUSE NO. PUD 201200183

FILED
AUG 02 2017

COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

Request by Commissioner Bob Anthony to the Applicant

Please provide the following for Cause No. PUD 201200183:

1. For either beginning or ending of each year since 2011,
 - a. Number of total customers, by class (residential, business, etc.)
 - b. Number of employees for Applicant (full-time, part-time, etc.)
 - c. Number of these employees who also are employed by an affiliate or subsidiary of Applicant.
 - d. Name and title of Applicant officers.
 - e. Number of employees with 2016 compensation exceeding \$100,000.
2. Total cash dividends paid to Applicant owners, shareholders or investors.

August 2, 2017